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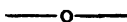
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THE LAW MAGAZINE AND REVIEW.

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I.—NOTES ON EARLY GERMAN AND ENGLISH LAND LAWS.

A.—THE GERMANIC LAND SYSTEM.

IT may seem idle to add one more interpretation of the much discussed passage in the *Germania* of Tacitus (c. 26). But the experiment will take so little room that it can do no harm. The critical words are these:—

Agri pro numero cultorum ab universis in vices [the other reading *vicis* appears to be only an early conjecture, see Orelli's notes] occupantur, quos mox inter se secundum dignationem partiuntur. Facilitatem partiendi camporum spatia praestant. Arva per annos mutant, et superest ager.

I would translate to this effect: "The German community takes up a tract of land in shifting possession, according to the number of its husbandmen. The land so occupied is then allotted among the members in proportion to their rank, the extent of open ground making this process a simple one. The arable allotments are shifted yearly, and there is unallotted land to spare."

First, what does *universi* mean? It might mean a whole tribe or nation, a State as we may fairly call it if we remember that it was not organised like the modern State. But the partition of lands, newly occupied or otherwise, between individual cultivators is the work not of the State, but of the smaller community which appears on various

scales and under various names, and for English purposes may best be called a township. It is possible, and indeed probable, that from the earliest times not only the kings but other great men had large portions of the folk-land allotted to them in separate lordship by the State, and of course apart from the communal system. Such men were not members, but lords, of the communities which might be settled on their lands. But it is also probable from what follows that it is the communal system that Tacitus here has in view. If he is not over careful to distinguish the township from the State, or to let us know of which he speaks, the same may be said of much later writers on the subject. We may take his *universi* then for the township or communal unit, by whatever name we may choose to call it. The next ambiguity is about *in vices*, and is so great that I think a translation ought not to decide either way. Is it only a condensed anticipation of what is stated in the next clause, putting the shifting possession of individuals in contrast to the general title of the community or *universi*? Or does it refer to the community as a whole, and signify that, as in the state of things described by Cæsar, the township migrated bodily from year to year? That state of things (B. G. 6, 22) may be described, in our native terms, in this way. Bookland is wholly unknown. Common land is held only as an allotment of folk-land to the particular township (*gentibus cognationibusque hominum qui una coierunt*), subject to annual repartition of the whole land of the tribe (*magistratus ac principes in annos singulos . . . quantum et quo loco visum est agri attribuant atque anno post alio transire cogunt*). If the township as a whole moves, of course each man's homestead must move too. This, however, is compatible with his having, as between himself and the township, a permanent title to a certain kind and proportion of homestead-plot out of the common land. Compare the shifting fee-simple in variable parcels

of land recognised even by our modern books in certain cases, of which common land subject to annual partition is the chief. (Co. Litt. 4a.)

This meaning appears to me the more natural one, as far as the words themselves go. Nor, bearing in mind the remark last made, does it conflict with Tacitus' implied assertion above (c. 16) of several property in the homestead (*suam quisque domum spatio circumdat*). He does not say that the homestead was fixed in one place. There might be a permanent estate in it, subject to annual or other change of site. In this view Tacitus would say almost exactly what Cæsar says. On the other hand, it would be as much, or even more, in Tacitus' manner to use *in vices* as forming a sort of antithesis to *ab universis*: thus he would say that the possession is at once continuous and shifting, continuous as to the township, shifting as to its individual members. Nor are we bound to make Cæsar and Tacitus agree.

But we are bound, I think, to find a meaning for *mox* in the following sentence. The common land is allotted "afterwards." After what? I do not see to what this can be referred unless to the taking possession by the township of previously vacant or vacated lands. Therefore I conclude, on the whole, that according to the information Tacitus had the township was as a rule still migratory.

As to the process of partition, it is clear that already there were distinct degrees of rank, that the more worshipful man got more land allotted to him, and the less worshipful less. "*Arva per annos mutant*" is taken by some good authorities to refer to the course of husbandry, and signify the alternation of crop and fallow. But it seems to me to have a more obvious and natural meaning, which there is no reason to depart from. It states the fact that every man had, or might have, a different parcel allotted to him each year. It might also import that the *universi*, the

whole township, occupy a new tract for tillage from year to year. Tacitus was capable of making the words carry both meanings. In like manner "*superest ager*" may refer to the unallotted common land of the township, or the vacant folk-land of the tribe not allotted to any township, or to both: I suspect to both.

Lastly, why does Tacitus use such a vague term as *universi*, instead of saying with Cæsar, whose account was doubtless before him, *gens* or *cognatio hominum*? Perhaps because he knew that the township had ceased to be a *cognatio hominum* in any real sense, and could not find any other definite Latin word that would not have misleading associations.

B.—THE CLASSIFICATION OF ANGLO-SAXON ESTATES IN LAND.

All authorities are now agreed on the leading distinctions. Folk-land was the property of the State, *ager publicus*. Bóc-land was land granted by written charter to be held as several property, and generally, though not necessarily, free from most of the public burdens imposed on land held by other kinds of title. There was also land held by townships or other communities and enjoyed in common by their members for pasture and the like. Further, there were lands of inheritance held in severalty by customary titles, and derived originally, as it is presumed, out of common land. For these two cases we do not know, or know but imperfectly, what the old English terms of art were; "*éthel*" is used by the best modern authorities to denote the hereditary allotment, and "*common land*" speaks for itself. Læn-land was land held by an occupier rendering rent or services, or both, from an owner who did not part with the ownership of the land, but only with its use.

Divers questions, however, remain unsettled as to the relations of these kinds of land to one another, and their relative importance in practice.

Mr. H. Cabot Lodge ("The Anglo-Saxon Land Law," in "Essays in Anglo-Saxon Law," Boston, U.S., and London, 1876), has shown much ingenuity in working out a scheme of old English land tenures in a form satisfying to the modern legal mind. The Anglo-Saxon mind, as the essayist himself allows, was not modern or legal in the modern sense. Thus the definitions and distinctions, when arrived at, are almost certainly more precise than anything that our ancestors habitually realized in either thought or language. In one or two matters Mr. Lodge's nomenclature, though logical in itself, seems to be historically without authority; and, as a systematizer almost inevitably does, he overrates the differences between himself and his forerunners in the same field. Kemble was fully aware of the distinction between the hereditary estate which he calls *éthel*, originally not alienable at all, and later alienable only within limits, and the fully alienable *bóc-land*. Kemble's *éthel* is what Mr. Lodge calls "family land," and I prefer to call "heir-land;" he gives *alod* as an alternative term, presumably in deference to the usage of some previous writer, for there is no reason to believe that *alod*, which is assumed by modern etymologists as the base of the med. Lat. *allodium*, was a real English word in historical times.* Kemble supposed, however, that at an early period land of this quality had practically disappeared, having either reverted to the State (or rather community) for want of heirs, or been turned into book-land. (Saxons in England, 1.301; "towards the closing period of the Anglo-Saxon polity, I should imagine that nearly every acre of land in England had become *bóc-land*," *ib.* 306.) Yet he had formerly said, (Cod. Dipl. Intr.

* The English form would be *alleád* or *æleád*. One would be quite prepared to find it, but so far as I am aware there is nothing to show its existence. The occurrence of *alodium*, *alodiarii*, in Domesday proves only that the term was more or less familiar to the Norman surveyors. If it represented an English *alleád* in regular use, one would expect it to appear much oftener than it does.

lxi.), he was inclined to think that the great mass of rent-paying land did not pass by charter at all. It appears to me that this first view of Kemble's is the correct one, and that his later opinion is untenable. It is improbable in itself for more than one reason. I do not see how heir-land could have been legally made into book-land to any considerable extent. I rather conceive that book-land was, with few exceptions, a luxury confined to great landholders and ecclesiastical corporations; the exceptions being cases where owners of book-land made relatively small grants out of it by book to favoured dependents. To speak technically, I see no reason to believe that the Anglo-Saxon "book" ever became a "common assurance of the realm." It is now common learning that to turn folk-land into book-land required the consent of the Witan: and accordingly I should rather liken the "book" to a private Act of Parliament. In fact, Beda speaks of grants by book as *litteras privilegiorum* in his letter to Egbert, thus pretty plainly showing that they had not acquired the character of common assurances in his time. *Privilegia* occurs again late in the 9th century as a synonym of *libri hæreditarii* (Cod. Dipl. cccxxiii).^{*} There is likewise a certain amount of positive evidence that heir-land existed and was dealt with as something distinct in kind from book-land, notably in the will of Duke Alfred of Wessex (Cod. Dipl. cccxvii). This evidence, though meagre, appears sufficient, and we need in no way be surprised that there is not more. Heir-land was alienable *inter vivos*, if at all, by the customary and popular modes of assurance of which traces may still be found in copyholds, and of which no written record would in those times be kept. Wills were made only by the greater landowners, and they seem not to have been drawn in technical language; at any rate they seldom specify the land

^{*} I do not care to lay much weight on this, however, as the mediæval usage of *privilegium* was no doubt loose.

devised as being book-land or otherwise. But of those we have some purport to be made with the witness of the testator's family, which looks as if some at least of the lands included in the will could not be dealt with unless by their consent. On the whole it seems the better conclusion that heir-land held its own down to the Conquest. I suspect that much of it survived for centuries longer, and that some of it still survives, in the shape of copyholds or customary freeholds.*

It should be mentioned that K. Maurer's authority, as well as Kemble's, is against the view now taken. He regards the conversion of *éthel* into bôc-land as an easy and constant process. But, assuming that private persons could create book-land at all, we must at least suppose that, as to make it out of folk-land required the consent of the Witan, so to make it out of heir-land would require the consent of the family, if not also of the community. And if such acts were common, why have we no charters recording them? Professor Sohm also, following K. Maurer and Schmid, assumes that the A. S. "book" was the common mode of assurance, and goes so far as to deny that symbolical transfers were used at all before the Conquest. (Frankisches Recht und römisches Recht, Weimar, 1880, p. 30.) For the reasons already given, I think the absence of records quite inconclusive; and besides it is not the case that we find before the Conquest "keine Spur der Investitur." Two examples occur in a record from the Black Book of Peterborough, printed by Professor Stubbs, in 1861, and accepted by him as genuine. Early in the eighth century "Æthelred, the glorious king of Mercia, on the occasion of a visit to Medesham-stede, gave to the brethren he found there thirty manentes at Lengtricdun, and confirmed the gift by placing on the Gospels' Book a sod taken

* There is already a great deal of proof that the ancestor of the modern copyholder is to be looked for in the *villanus* of Domesday, whose condition was very different from that of the villein described by Blackstone.

from the place." "Again a purchase of lands at Cedenanác from the king "was ratified at Tonitun (Northampton?) in the king's chamber, by joining of hands, and by placing a sod from Cedenanác on the Gospels' Book, in the presence of Bishop Saxulf." Here we seem to catch the very moment of the final struggle of the older symbolical ceremony with the "book" which for great occasions was to supersede it. My own belief is that for the common occasions of private persons the symbolical transfer never went out of use. It seems to me no extravagant supposition that many of the symbolical customs still found in copyholds, such as surrender by a straw in the manor of Winteringham, in Lincolnshire (*Academy*, Nov. 19, 1881, p. 386), are really of immemorial antiquity. On Sohm's and Schmid's theory they would be late mediæval imitations of the Franco-Norman custom.

It seems far-fetched, however, to find in the laws of Alfred an attempt to convert book-land into heir-land by way of reaction towards pure Teutonic principles (*Essays*, pp. 70, 71). The law says that a man who has inherited book-land from his kindred must not give it from the family "if there be writing or *witness* that it was forbidden by those men who at first acquired it, and by those who gave it to him, that he should do so." Probably this was only a confirmation of existing law (compare the preamble), and it rather goes to show that restrictive clauses were often disregarded than anything else. But it does seem to allow validity to restrictions of this kind not expressed in the book itself, but only declared by the donor in the presence of witnesses: a point not noticed by Mr. Lodge. So far we may say that the peculiar quality and privileges of book-land were kept in check by the old family principles.

Another question is that of *læns*. Mr. Lodge divides *læns* into two classes, booked and unbooked. The booked *læn* falls into the genus of book-land; the unbooked *læn* may be

derived out of any kind of superior interest, booked or not booked. Kemble holds that the term *læn* was not properly applied to any booked interest whatever; so that his *læn* (and Schmid's, see his Glossary, s.v. Folcland) is Mr. Lodge's "unbooked *læn*." The difference is really one of nomenclature. Mr. Lodge's nomenclature is the more logical; but we have no right to assume that our ancestors of the eighth or even the eleventh century were logical, and to make good his point historically Mr. Lodge should produce clear instances of the term *læn* being applied to interests created by book; whereas his instances go to show that when an existing interest was booked the tenant's estate not only became book-land, but ceased to be called *læn*-land. As to Mr. Lodge's proposition that every estate of folk-land was an unbooked *læn*, I venture to think, with as much confidence as one can have in a matter where the positive evidence is so scanty, that no Englishman before the Conquest, layman or clerk, would have understood it. The essence of *læn*, as far as one can make out, was holding under a definite person as superior by specific services. The tenant of folk-land might be the lord of other persons, and might let out the whole or part of his folk-land to them by way of *læn*. But his own holding was not a *læn* according to the only usage of the word which is known to us. He held not under any person, but under and by the allotment of the State. The land in his hands was subject not to private, but to common and public payments and services. Mr. Lodge is hardly entitled to charge historians with confusion of thought for following the nomenclature of their authorities.

It must be allowed that the distinction between the *folk-land* belonging to the State and the *common land* belonging to particular communities has been too much slurred over by most writers on the subject. Konrad Maurer's very clear discussion (in *Kritische Ueberschau*,

Munich, 1853), must however be specially excepted from this remark. It may be difficult to say how far the distinction was maintained in historical times; but in any case we ought to start with a clear conception of it.

A question worth considering is whether common land might not itself be held as parcel of the folk-land: that is, whether land might not be allotted to a community without the State losing the ultimate property therein. This must indeed have been the case when the community was still *migratory*, as described by Cæsar and, in my view, by Tacitus. Or the same result would be produced by a community settling bodily, or else encroaching, on folk-land not formally allotted. Now what would be the effect if folk-land thus occupied were turned into book-land by a grant from the King duly approved by the Witan? It would operate, it is conceived, as a conveyance of the lordship and revenues of the communities settled on the land. It seems a tenable position that a large proportion of the grants of book-land were in truth grants of lordship and revenues and of nothing else. And here we have a probable origin of many of the dependent vills and townships which certainly existed before the Conquest.

Perhaps we may even suppose that all common land theoretically remained folk-land, though the State had abandoned its original power of resumption and redistribution. And if this theory applied to heir-land held in several ownership, as well as to the common land out of which it was originally derived, the division into folk-land and book-land would be really, as the earlier writers on the subject supposed it to be, an exhaustive one.

F. POLLOCK.

II.—THE PRELIMINARY INVESTIGATION OF CRIME.

IN Archaic society where scenes of violence prevail, the first and the largest space is necessarily occupied by criminal legislation. But it is the fashion to assume, or allege, that as society advances in civilisation, and population increases, the complicated arrangements of social life give a greater prominence to civil or municipal law, and consequently diminish the importance of the criminal law, and push it into the background. We venture to think, however, that this is not altogether a just or deserved criticism; and, without underrating the importance of municipal law, we would suggest that a wise and firm administration of the Criminal Law was never of greater interest in this country than it is at the present moment. At no time has there been within the confines of this country a greater amount of pent-up brutality and lawlessness, which nothing but the dread of punishment can restrain, and with crimes of violence increasing, with a criminal class in England and Wales estimated at 80,000, necessitating the maintenance of a Police force of over 34,000 men to “keep their eyes on them,” crime can never be an object of indifference to the people. Crime, like fashion, changes its form, but can hardly be said to diminish; and the utmost resources of our civilisation are not more than a match for it, each new device of Justice but serving to whet the inventive faculties of the law-breakers, and incite them to greater efforts. As the successful issue of Criminal proceedings must always be greatly dependent on the efficiency of the initiatory steps—on what the French term the *Instruction*—it may not be without advantage to compare the methods of procedure adopted in our own country with those of other countries,

with a view to testing their comparative merits and fitness to secure the end in view.

Under all primitive Criminal Codes—be they Roman or Germanic in their origin—the State, like the private aggrieved person, adjusted the measure of its vengeance to the circumstances of the case. When the blood of the injured individual was up, the Anglo-Saxon, like the other Germanic codes, allowed the thief who had been run to earth and caught with the booty to be hanged on the spot; but took a very different view of the affair when once the pursuit had been intermitted, and any considerable interval had intervened between the commission of the crime and the detection of the thief. This difference of view may be traced in the tenderness with which the offender was approached even in the time of Edward I. In 1292, in a case arising upon the Hereford Iter, it was adjudged that: “If any one commit any crime in the bailiwick of any liberty, the bailiffs of the said liberty shall come to him with their white staves in a peaceable manner, and shall tell him to yield himself to the peace of our lord the King; and that if he will not, but defend himself, then at length it is lawful for the bailiffs with their force to take him, and to put him in prison if he be liable to imprisonment, or to arrest him if he be not liable to imprisonment but only arrestable; and not to come to take him in the first instance with swords, &c., to wit, armed in warlike guise; for in the latter case it is lawful for him to defend himself.” (*Year Book*, 20 & 21 Edwd. I., p. 126. *Plea of Walter de la Barre and others v. John Lovet*).

But even this arrest could not take place until a specific charge had been laid against some one, it being a recognised principle in the jurisprudence of most civilised nations that no subject ought to have his personal liberty or reputation imperilled by an arrest and criminal trial unless allegations, or ascertained circumstances, pointed to at least a violent

suspicion of guilt on his part. Though, however, all are agreed as to the principle, different views are entertained in different countries both as to the mode by which, and the extent to which, such preliminary ascertainment of facts should be carried out; some jurists considering it more conducive to the interests of society that such examination should be *ex parte* and private, and others that it is fairer to all parties to have such proceedings in public and exhaustive, as in the trial itself.

According to the original form of the English jurisprudence, the investigatory procedure was altogether unknown; the public trial being the only occasion on which witnesses could be judicially examined. Such a procedure was rendered unnecessary in England, a similar result being arrived at in another way; the institution of the View of Frankpledge (or Peacepledge, as it ought properly to be called) having provided ample security for the liberty of the subject. Then, as now, the law-breaking propensities of persons under twelve years of age were not likely to cause much anxiety to the community, which, as a rule, treated them as incapable of injuring it, and after the age of sixty the most unruly spirits have probably ceased to be formidable. In a case on the Cornish Iter in 1302 (recorded in the *Year Book*, 30 & 31 Edwd. I., Appendix I., 511), Richard and John were indicted for manslaughter. It was alleged that when the event happened John was not twelve years old: Spigurnel—"If he had done the deed before his age of seven years he should not suffer judgment; but if before his age of twelve years he had done any other deed not involving the loss of life or limb, and against the peace, he should not answer, because before that age he is not with the peace," &c.

So long as the community was bound in its own interests to present all law-breakers for trial there was no need for the preliminary investigation; and the liberty of the subject

was perfectly secure, seeing that it rested with the public themselves to set the criminal law in motion. Without this preliminary finding, or presentment, that an offence had been committed, the King, as guardian of the public peace and interests, could have no suit for a wrong done affecting the public, though it was otherwise with regard to wrongs done to himself, which were directly brought to the notice of the Courts by his officers. The Grand Inquest was but a committee acting for the general community, and through whom charges were preferred against wrongdoers. All persons are, of course, liable to be arrested when accused of crimes, and to have their persons detained in order to be forthcoming to answer an accusation. If taken "with the mainour," *i.e.*, red-handed, or with the proceeds of a robbery in his possession, a person might at once be apprehended; but otherwise, as it was formerly insisted, no one could be deprived of his liberty till the finding of a bill against him by a Grand Jury, and it was but an encroachment on the common law for justices of the peace to grant warrants before presentment or indictment. (*The King v. Machin and others*, 1 Shower, 54). In a case of the time of Edward I., when the twelve say that two men were taken by the bailiff and conducted to York before the justices assigned to deliver the gaol, and were there delivered, the justice asks the bailiff—Why were they taken? The Bailiff: For suspicion of crime. The Justice: Had they not been indicted by the twelve beforehand? Bailiff: No. The Justice: Because this was contrary to form of law, "*tu, ballivus, in misericordia sis.*" So long as the View of Frankpledge was observed, and each hundred had its Grand Inquest, this was a perfectly legitimate and natural position to take up, and required no abstruse reflections on the provisions of Magna Charta for its support, the presentments of the Grand Inquest being but the public preferment of charges. But from the time

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when the View of Frankpledge ceased to be regularly observed, as was the case after the reign of Henry IV., changes were gradually introduced into the working of the Grand Inquest, which tended to greatly alter its character.

As yet there were no justices, no police organisation in the modern sense, and no magisterial enquiries. With a population of less than six millions, no public press, roads bad, and communication slow and difficult, the Inquest was the natural means by which information was collected on all matters of public interest, and was the established course for ascertaining the rights of the Crown. The essence of the inquiry by the Inquest was that men personally acquainted with the matter in hand swore to it, and their information so given was recorded by Judges chosen for the purpose. The Anglo-Saxon Crown Law consisted of the several Articles (*Capitula Coronæ*), which were given in charge to the Grand Inquest by the Earl or Sheriff at the several Tourns; when, if any person was, to their knowledge or belief, guilty of a breach of any of those Articles, he was delivered up by the Compurgators—i.e., presented by the Grand Jury of his Hundred, and he had then to purge himself by Oideal, in the room of which the Petty Jury was substituted after the Conquest—in other words, he was put upon his trial.

In the proceedings of the Justices in Eyre at Launceston, in the 30th Edward I., it is said all the Inquests of the twelve from the Hundreds and towns, when they had given in their panels, were commanded that, "according to their Articles," they should give in the names of conspirators, &c.

As intelligence and population increased, the difficulties in the way of the Inquest having personal knowledge of the matters submitted to their charge, and on which they were to inform the Justices of gaol delivery, increased; and when, in the reign of Edward III., the Inquest for each

Hundred was superseded by the Grand Inquest for the whole county, and they were obliged to act on evidence supplied by others; they ceased to be witnesses, and became Judges informed by witnesses.

With this extension of the area over which the enquiries of the Grand Inquest were to be exercised, the conditions became entirely changed, and their presentments were, in fact, no longer the mere embodiment of the *fama publica*, but the conclusions of a Court of Preliminary Inquiry. The altered circumstances of society had necessitated the change. From the time of Henry IV., when the View of Frankpledge ceased to be regularly observed, malefactors could no longer be considered as being out on the permanent bail of the rest of the community, and consequently it became necessary to apprehend them and to hold a judicial inquiry into the charges against them. Presentments were no longer the voice of the community preferring charges by the mouths of the Grand Jury, but the act of the person aggrieved which had to be enquired into. Until the charge was preferred apprehension of the accused could not take place, which usually meant until presentment of the crime made by the Grand Jury—the equivalent of accusation.

The Hundred being responsible for the peace of the district, the freemen, by the laws of King Alfred, had been directed to choose an Annual Officer, whom they called Constable, for the preservation of the peace. By the common law he might arrest felons and all suspicious persons, and he was to present all offences inquirable in the Tourn or Leet—or, in the oath as set down by Kitchen, 47—to present all bloodshed, outcries, affrays and rescues done within his office; while in affrays in his presence, he might arrest and detain the affrayers till they gave surety for the peace by bond—in later times, when Justices of the Peace had been instituted (*tempore*, Edwd. I.) he was to take them before a Justice for that purpose.

The conservator of the peace in a Hundred was called a Constable or High Constable; in a tithing, a Petty Constable, borsholder, headboraugh, or chief pledge. These wardens, like the compurgators in the View of Frankpledge whose officers they were, were personally liable for any act of negligence, and were fined if the robber escaped with his booty. "For the law intends when a robbery is done, that if the country will not pursue the malefactors, that some of them are receivers or abettors of the felons"—*Dyer*, f. (2 Leon. 12)—and in this view the Statute of Winton (13 Edwd. I., c. 2), declared that the Hundred should be "answerable for the robberies done, and also for the damages," if they failed to take the robbers within forty days—and not because they did not prevent the robbery (*Cooper v. Hundred of Basingstoke*, 7 Mad., 157). And according to *Bathurst*, f., "This statute did not create damages, but only gave the party a different remedy from that which he had before: for the party robbed, before that statute, might have laid an action against the Hundred for not keeping watch and ward." (2 Wils., 92).

It was especially incumbent on Constables to pursue hue and cry when called upon, and in all cases of robbery on the highway, on the party's going to the nearest town and declaring the fact to the Constable, describing the offender and the way he had gone, the Constable was obliged immediately to raise his town and make search for the offender; and, if within forty days the felon were not apprehended, an action lay against the inhabitants of the Hundred to recover the value of the property lost, under the Statute of Winton. In an action against the Hundred of Gravesend for a robbery on Gad's Hill—the scene of the exploits of Falstaff and Prince Hal and the rest of his rollicking companions who "for sport's sake are content to do the profession some service"—the inhabitants thought it hard that they should answer for robberies committed on Gad's

Hill, because they were so frequent there, that if the inhabitants should answer for them all, they would be utterly undone ; and Serjeant Harris, who appeared on their behalf, pleaded that time out of mind, &c., felons had used to rob on Gad's Hill and so prescribed to be discharged ; but the plea was over-ruled and the inhabitants held liable. (2 Leon., 12).

Such a provision obviously opened the door to fraud and collusive actions, and at last the case of Chandler, an attorney, who in 1748 sued the Hundred of Summing in Bucks, which was attended with many suspicious circumstances, and was laid for a very large sum of money, occasioned the passing of the 22 Geo. II., c. 24, which enacted that no person should recover more than £200 against the Hundred, unless at the time of the robbery there were two together in company to attest the truth of the robbery.

After the institution of Justices of the Peace, it became necessary to ascertain that there were reasonable grounds for suspecting that an individual brought before them had committed a criminal offence before he could be detained in custody or held to bail, and this was done under the provisions of statutes passed for that purpose, by taking the information of those who brought the accused—but the sole object of this preliminary examination was not to try the charge, but to justify the detention or holding to bail of the accused.

By the common law all persons were bailable in criminal cases, except for homicide ; and as under the Anglo-Saxon constitution, on taking the Array in the several Shires, if any one was found who had no compurgators, he was put in prison till he could obtain some Decenary to admit him, so in later times the felons, or suspected felons, taken into custody by the Constable or arrested by the Justices of the Peace, under the powers of Stat. West 1., 3 Edwd. I., 1, were kept in gaol till the coming of the Justices of Gaol Delivery,

unless they could find bail for their appearance: in other words, as laid down by Buller, J., in *Richardson's Case* (Leach's C.C., 561), when once a prisoner is in legal custody for an offence, he must find sureties before he can be discharged.

At common law, however, as declared by Bridgeman, L.C.J. (Kelyng 19), Justices of the Peace were not enabled to take examinations—the bailing or detention of those brought before them were the only matters of which they had cognizance, and the abuses arising from their improper exercise, or refusal, of bail were the only objects of the Statutes relating to the duties of Justices up to the time of Philip and Mary. The Statutes 1 and 2 Ph. and M.C. 13, and the 2 and 3 Ph. and M.C. 10, were the first that enabled Justices of the Peace to take anything in the nature of an examination of the charge on the arrest of a prisoner, and, according to the opinion of Grose, J., in *Lamb's Case* (Leach's C.C., 558), the only intention of the Legislature in passing the former Act was to prevent Justices of the Peace from admitting offenders improperly to bail; while the sole object of the latter Act was to enable Justices to take such “Information of those that bring the prisoner, of the facts and circumstances of the felony, and to transmit what passes before them to the Court of Oyer and Terminer, or Gaol Delivery, to enable the Judge and Jury before whom the prisoner is tried to see whether the offence is bailable, and whether the witnesses are consistent or contradictory in the evidence they give. But it cannot be collected from them that the examination was directed to be taken merely as evidence against the prisoner; nor, indeed, in practice is the examination ever given in evidence as a matter so required by the Statutes.

The two statutes then of Philip and Mary were passed without any direct intention on the part of the Legislature to use the examinations and depositions so directed to be taken as evidence upon the trials of felons. (See judgment

of Best, J., in *Cox v. Coleridge*, 1 B. & C., 37.) But the taking of such depositions having, in cases of felony, been sanctioned by the Legislature, any objection to their being used as evidence on the ground of their being extra-judicial and unwarranted (which at common law they would have been) was removed, and they accordingly became admissible in evidence on the rules and principles of evidence already established: though it is clear that depositions when not regularly taken in compliance with the directions of the statute cannot be read in evidence.

The investigation which those statutes directed Justices of the Peace to make on charges or suspicion of felony, viz., the examination of the prisoner which was to be *without oath*, and of the witnesses *upon oath* (Per Ord. Kelg., 2), taking the information of the whole truth, though it tended to the acquittal of the prisoner—was not in any sense a *trial*, but was only a preliminary inquiry whether there was sufficient ground to commit the prisoner for trial. In the investigation of such a charge therefore it was held that an attorney was not entitled as of right to be present on behalf of the accused. “An attorney,” said Abbott, C. J., in *The King v. Borron* (3 B. & A., 439), “has no right even to be present at such an enquiry. The presence of an attorney on such occasions is often permitted, as a matter of courtesy; his assistance is sometimes desired, and if his advice and opinion are asked, it is proper for him to give them; but he is not to take leave, uninvited, to obtrude his commentaries on the case.” . . . “*The proceeding before the Grand Jury is precisely of the same nature*, and it would be difficult, if the right exists in the present case, to deny it in that. This being only a preliminary inquiry, and not a trial, makes, in my mind, all the difference. At a *trial* before a magistrate it may perhaps be different.” Bayley, J., in *Cox v. Coleridge* (1 B. & C., 51), expresses himself to the same effect. “There is an analogy,” he says, “between this

case and that of the Grand Jury; and if it be hard, as it is argued, that a party accused, who by law is allowed to be present at the inquiry should be deprived of the assistance of an advocate, in how much worse a situation is he placed before a Grand Jury where he is not allowed even to be present himself; and yet in that case, upon a bill being found, a warrant immediately issues upon which he may be deprived of his liberty."

The chief object of those statutes was thus the justification of the magistrate in committing or holding to bail; but incidentally certain important advantages resulted from them which were not contemplated by the Legislature at the time of passing those Acts. These magisterial enquiries being prescribed by statute, their proceedings assumed the character of judicial acts, and became, on the principles of the common law, admissible as evidence on the trial; and hence, besides the advantages of enabling the Court to judge of the consistency or otherwise of witnesses, the informations taken upon oath and put in writing, of all those who could give material evidence against a prisoner and were also bound over, and sworn to by the Justice, or his clerk, that took them, to be truly taken, might be read in evidence against the prisoner at the trial, if the informant were dead, or not able to travel, and sworn so to be. And, according to Hale, by the opinion of some, if a person were bound over, and failed to appear on the trial—whether by procurement of the prisoner or not—his deposition might be read. Thus the perpetuation of testimony was indirectly secured.

On the same principles the proceedings before the Coroner became at common law admissible as evidence on trials for homicide—though, like the magisterial inquiries, no such object was avowed by the statutes regulating their proceedings.

In 1666, Lord Morley and one Hastings, having met at

the Fleece Tavern in Covent Garden, fell out and had high words. When the quarrel was in the tavern, the Lord Morley said, "If we fight at this time, I shall have the disadvantage from the height of the heels of my shoes," and afterwards they went out into Lincoln's Inn Fields when Hastings was killed. It was proved that the Lord Morley killed Hastings, but that while they were fighting, one Bromwich, who was with him, drew his sword and made a thrust at Hastings, and thereupon the Lord Morley closed with him and killed him. For this Lord Morley was indicted for murder before the Court of the Lord High Steward and found guilty of manslaughter, and was dismissed without being put to his Book, or burnt in the hand, according to the Statute 1 Edwd. IV., c. 12. Afterwards, on the 11th May, 1666, Bromwich was brought to his trial at the Bar of the King's Bench and before a Jury of Middlesex, for being present, aiding and assisting Lord Morley in the killing of Hastings. At the trial, White, the Coroner of Westminster, offered examination of witnesses who were sworn to be dead, swearing that they were the same that were taken before him, viz., of one Woodward and one Handcock, which *per curiam* is good evidence of any murder or other crime." "As they were read before the Lords on the trial of the Lord Morley, by the opinion of all the Judges of England." *Bromwich's Case*, 1 Levinz., 180 (also in 1 Siderfin, 277, and 2 Keble, 19), and see 6, State Trials, where the Resolutions of the Judges in Lord Morley's case are set out.

The Acts of Philip and Mary only mentioned felonies, and in cases of misdemeanour magistrates were not in the habit, nor did they think it any part of their duty, to reduce the examinations of the witnesses to writing and return them to the Sessions of Gaol Delivery, but in the year 1826, the Legislature, deeming it right that this should be done in all cases, passed an Act for that purpose. This was the

7 Geo. IV., c., 64, for improving the administration of Criminal Justice in England, and it substantially re-enacted the old Statutes declaring that in cases of felony or suspicion of felony, the magistrate before committing or admitting to bail, "shall take the examination of such person (the accused) and the information upon oath of those who shall know the facts and circumstances of the case and shall put the same, or so much thereof as shall be material, into writing ;" the same course being directed to be pursued in the case of misdemeanors.

With the exception that, by the statute last mentioned, all Examinations and Informations on which any person should be imprisoned or admitted to bail were placed on the same footing, and that more definite power of bailing was conferred on Justices, the practice established by the earlier statutes remained constant and uniform down to the year 1848.

That year however marks a new departure in the law and practice as to the preliminary investigations of indictable offences ; the old things were swept away and a new edifice reared, by a competent hand it is true—though like many of the "bag and baggage" reformers his enthusiasm had the effect of brushing aside some very useful rules and presenting others under new masks by placing what should form the beginning of the enquiry at the end.

Sir J. Jervis, when Attorney-General, in 1848, among other law reforms took in hand that of the law relating to Magistrates with a view to affording them all possible assistance in the discharge of their numerous duties. The law upon the subjects entrusted to them was scattered among many Acts of Parliament, and many recorded decisions of the Court ; and it was difficult, if not almost impossible, for magistrates to execute their various functions in the honest performance of their duty without being subject to prosecutions or actions. Indeed it had

become matter of complaint that it was the common practice to bring actions against magistrates for illegal commitments, laying the damages under £20 to save the jurisdiction of the local courts, merely for the purpose of harassing them; and as, even in the case of their gaining a verdict and coming off victorious, they were mulcted in £15 to £20 expenses, many of the "unpaid" (in more senses than one) were fain to rid themselves of the honour of a J.P. by sending in their resignations. Hitherto the Justices had been wont to hold their Courts and enquiries in the Village Inn, and it was thought hardly decorous that beer and justice should be always found in company—that the latter might get a bad name (*e sociis noscitur*) and "Giles" be exposed to temptation when an order had been made on him or he had left the Court "with his friends"; and the same spirit of decorum suggested the desirability of paying the magistrates' clerk by salary instead of by fees. Accordingly the Attorney-General moved for, and obtained leave to bring in—"(1) A Bill to facilitate the performance of the duties of Justices of the Peace, out of Sessions, within England and Wales, with respect to persons charged with indictable offences: (2) A Bill to facilitate the performance of the duties of Justices of the Peace, out of Sessions, within England and Wales, with aspect to summary convictions and orders: (3) A Bill to regulate the holding of Courts of Special Sessions and Petty Sessions: and (4) A Bill to protect Justices of the Peace from vexatious actions for acts done by them in execution of their office."

These four Acts were intended to constitute a complete code of magisterial criminal law—a *corpus juris*, "full of wise saws and modern instances"—provided with which every "Justice of the Peace, and *Coram*," who like Shallow, wrote himself "*Armigero*;" in any bill, warrant,

quittance or obligation," might consider himself armed *cap à pied* for the legal arena. The first two Acts especially did not profess to contain any new provisions, but to be merely a digest of the existing Acts and of the decisions thereon; but in the process the first of them with which we are most especially concerned, seems but to have exemplified the Darwinian theory of the survival of the fittest, involving the extinction of many useful though unobtrusive observances.

By the consolidating statute it is provided that any person charged with an indictable offence being before a Justice, voluntarily or otherwise, such Justice, previously to committing the accused person to prison for trial, or admitting him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to, and signed respectively by, the witnesses who shall have been so examined, and shall be signed also by the Justice or Justices taking the same (sec. 17). After the examination of all the witnesses on the part of the prosecution, as aforesaid, shall have been completed, the Justice shall read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence *against you* upon your trial;" and whatever the prisoner shall then say in answer thereto shall be taken down in writing and read over to him, and shall be signed by the said Justice or Justices, and kept with the depositions of the witnesses, and transmitted with them

to the Court of trial, where they may, if necessary, be given in evidence *against him*, without further proof thereof (sec. 18).

And now, under the provisions of 30 & 31 Vict., c. 35, sec. 3, passed in 1867, the Justice, after complying with the requirements of sec. 18, just referred to, shall immediately "demand and require of the person accused whether he desires to call any witness, and if the accused person shall, in answer to such demand, call or desire to call any witness or witnesses, such Justice or Justices shall, in the presence of such accused person, take the statement on oath or affirmation, both examination and cross-examination, of those who shall be so called as witnesses by such accused person, and who shall know anything relating to the facts and circumstances of the case, or anything tending to prove the innocence of such accused person, and shall put the same into writing; and such depositions of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the Justice or Justices taking the same, and transmitted in due course of law with the depositions, and such witnesses, not being witnesses "merely to the character of the accused, as shall in the opinion of the Justice or Justices give evidence in any way material to the case, or tending to prove the innocence of the accused person, shall be bound by recognisance to appear and give evidence at the said trial; and afterwards, upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken."

Falling back upon 11 & 12 Vict., c. 42, section 25, directs that when all the evidence offered upon the part of the prosecution against the accused party (and also the witnesses called by or on behalf of such accused party under sec. 3

of 30 & 31 Vict., c. 35) shall have been heard, if the Justice or Justices of the Peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order such accused party, if in custody, to be discharged as to the Information then under inquiry; but if, in the opinion of such Justice or Justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such Justice or Justices shall, by his or their warrant, commit him to the common gaol or house of correction, to be there kept until delivered by due course of law, or admit him to bail as hereinbefore mentioned.

In the endeavour to make the duties of Justices fall in pleasant places, it was no doubt wisely determined to remove, as far as possible, everything that could perplex or disturb the serenity of the magisterial mind; and so, like the ladies' postscripts, the most important matters were, in accordance with our legislative usage, relegated to the end of the Act, and a clean sweep made by sec. 34 of all Acts or parts of Acts inconsistent with the provisions of the 11 & 12 Vict., c. 42.

The reader who has made himself familiar with the practice followed in such cases down to the year 1848 cannot have failed to remark the total omission in the 11 & 12 Vict., c. 42, of any reference to the examination of the prisoner. Such notice as is taken of him comes at the end, instead of at the beginning of the inquiry, and he is no longer subjected to the inconvenience of having questions put to him, or of giving any account of himself unless he pleases, and then only after all the evidence against him has been given, and he has had ample opportunity for framing or concocting his answer. Instead of

his examination being taken in the first instance, when his story might be of some value as establishing his innocence, or by reason of its consistency with other statements that might be made afterwards or by other persons, not a syllable is asked of him until the whole evidence has been disclosed in his presence, and he has had an opportunity of adapting his answer to the facts alleged against him, and thus weakening the value of anything he may advance. Even then he is treated in a way unknown to any other European State, and almost invited not to say anything, so elaborate are the warnings and explanations made to him. When a man is solemnly warned that nothing he he may say can ever be of the slightest advantage to himself, and that, at best, it can only inure to his disadvantage, and be used against him, what wonder that he should generally think that "silence is golden," or that prisoners' statements should convey so little, and depositions so often conclude, "whereupon the said A.B., after being duly cautioned, saith as follows:—'I am not guilty,' or 'I reserve my defence,' or even, 'It's a lie.'" His whole treatment now-a-days seems like one continuous apology for putting him to the inconvenience of arrest, and an organised effort to shield him from the attacks of that Society whose peace he has probably broken, and the same consideration is shown towards him to the very end. Although a prisoner may make statements or admissions before trial which are admissable against him in evidence, he cannot *at the Trial* make any admissions in cases of felony, and though the prosecutor is bound to bring to the prisoner's notice the evidence to be adduced against him, the prisoner is under no such restraint as to his case, but may lie by till the last moment, and then, without the slightest notice, suddenly spring an *alibi* on the prosecutor, and support it by the shadiest of testimony, with the full assurance that want of time will prevent any investigation

of the character of his witnesses. And then, when all is over, when the prosecutor's case is closed, the prisoner is afforded the further advantage of being invited by the Court to say anything he likes to the Jury; and, having this unlimited licence given him and no fear of an oath before his eyes, he usually likes to say that which will best serve his purpose quite irrespective of its truth—and he generally does.

Why such excessive tenderness should suddenly be manifested towards a person when circumstances point to his having broken the law, it is hard to explain: important though it be to deal fairly with the individual, it is no less so to preserve the interests of Society. In Criminal Investigations the interests of the individual come into collision with those of the public, and in the search for truth which is, or ought to be, the object of all judicial enquiry, the difficulty is to make use of means that shall be effective, and at the same time pay due regard to the interests of both parties. Still, in all Criminal Investigations, the safety of the community and the ascertainment of truth, must be the first consideration; and, in the quest, it surely cannot be unfair to resort to the means that naturally suggest themselves in the ordinary affairs of life. In cases of civil dispute the stories told by the Plaintiff and Defendant respectively are the first things looked to in judging of the merits—the testimony of others, and of circumstances, coming in afterwards by way of confirmation or refutation of their story. Similarly, when an information has been laid before a magistrate of a crime committed, it is surely all important to know what the accused has to say for himself when the charge is preferred, what account he gives of his actions at a time when there can be no suspicion of his having concocted a story to fit the allegations against him; if true, subsequent inquiries will only tend to place his innocence in a clearer light by confirming the truth of his

story; while if untrue, his guilt must be the* more easily demonstrated, and the interests of Society advanced and secured. By those who are acquainted with the history of our Criminal Procedure it can hardly be asserted that such an examination of an accused person would be "un-English;" in the early days when preliminary investigations were unknown to our law, and *fama publica* was the sole accuser—ere Justices could take Informations of those who brought felons—it was the custom to administer interrogatories to prisoners upon their Trials, and to do so in no sparing terms. This power is expressly recognized by Lord Coke as legal in his 2nd Institute.

"If any person was suspected of any crime, treason, felony, &c., the party is to be examined upon certain interrogatories; he may hear the interrogatories, and take a reasonable time to answer the same with deliberation, and the examined, if he will, may put his answer in writing, and keep a copy thereof; and so it was resolved in Parliament by the Lords, spiritual and temporal, in the case of Justice Richill [A.D. 1397]. And the Lord Carew being examined for being privy to the plot for the escape of Sir Walter Raleigh attainted of treason (Anno 16 Jacobi regis), desired to have a copy of his examination, and had it, as *per legem terrae* he ought." (2nd Institute, 57.)

And Lord Campbell, in his Lives of the Chancellors, thus comments on the Trial of the Duke of Norfolk in 1572: "The French fashion of interrogating the prisoner then prevailed in England, and the Duke was frequently asked to admit or to deny certain facts—to explain his

* The importance of statements made by accused persons at the beginning of criminal inquiries—their improbability, the contradictory nature of statements made at different times, and their consistency with other facts, and the results of subsequent inquiries—are all pre-eminently exemplified in cases depending on circumstantial evidence, *e.g.*, in Greenacre's case in 1837; Howe's case in 1813, and Richardson's case, in Scotland, in 1786—all referred to in Wills' Circumstantial Evidence.

conduct on particular occasions—and to reconcile the evidence adduced against him with his alleged innocence.” (Vol. 2, p. 117.) Circumstances have now eliminated the interrogatory from our criminal trials, though originally there was much force in the observation that no one knew the facts of a case so well as the accused himself; and when in 1554 the Acts of Philip and Mary enabled Justices to take preliminary examinations of felons, they naturally directed such inquiries to begin with the examination of the accused himself; and so Dogberry, addressing Leonato in *Much Ado About Nothing*, says, “Our watch, sir, have indeed comprehended two auspicious persons, and we would have them this morning *examined* before your worship.” At no time in our legal history was an accused person ever required to make his statements on oath; but, being brought before a Justice, that functionary began his inquiry by interrogating the accused from the materials at hand in the information containing the circumstances of the charge, and inviting him to give such explanations of them, or of his own conduct, as he thought fit. In this way a formal deposition could be made by the person most interested in the inquiry at a time when no collusion or combination could be suggested, and which in the result might be of incalculable benefit to the accused. Being a portion of a judicial proceeding, it might, if thought fit, be put in evidence by the prosecutor at the trial, and, what was of more importance, it might also be put forward by the accused on his own behalf, and be the means of leading to inquiries conclusively establishing his innocence. That such declarations have frequently stood accused persons in good stead is certain; and as one fact is said to be worth twenty arguments we will give an example. At the Durham Summer Assizes in 1819, James Wolfe and others were arraigned on a charge of murdering Isabella Young, the servant of Miss Smith, at Herrington, near Sunderland, on

the 28th August, 1815. The chief evidence against Wolfe was that of a man who had himself been in custody on the charge, and who deposed to certain conversations he had had with him at the end of 1814—to his using threats towards Miss Smith; &c. The only evidence the accused produced at the trial was his own deposition when before the magistrates, in which he gave a detailed account of all his movements between February, 1815, and April, 1816; having no witnesses in support of it, and there being no one whose duty it was to investigate the circumstances, he was convicted, but subsequent enquiries instituted on his behalf by private persons clearly established his innocence and procured a pardon, when otherwise, had such a statement come from him at the *end* instead of at the *beginning* of the enquiry, he would probably have ended his days—

“ With a leap from the leafless tree,
And a cheer from the crowd below.”

Besides, such a statement could not have been put in by him under our new and improved practice since 1848. Not only can no question be put or anything said to a prisoner now, except tendering the advice that he had better say nothing as he cannot possibly do himself any good, for if he persists in speaking, his statement can *never be evidence for him* but only *against him*.*

That the Interrogatory which Bentham and others have declared to be the best, and, in some instances, the only means of eliciting truth, should be so completely abandoned is a curious sacrifice of efficiency to that halo of sanctity with which a suspected criminal is surrounded, and which

* In *Reg. v. Haines* (1 F. & F., 86), the prisoner's statement when before the magistrates, not having been put in for the prosecution, it was offered in evidence on his behalf. *Crowder, J.*, “ You cannot do this. The prisoner's statement is evidence against him, *but not for him*, but what he said then he may repeat now through you.” We should have thought it only fair to give him the benefit of it, whichever way it told.

is so very different from his treatment when at large. We have no desire to see it revived on the *Trial*, or to witness the unseemly wrangles which often take place between French Judges and prisoners—that has been condemned by eminent Frenchmen themselves—but there is a wide difference between that and the preparation of the evidence before trial—the *instruction* as it is called in France. All modern systems recognise the propriety and necessity of beginning operations by an examination of the accused person.

In France, Article 55 of the Code of Criminal Instruction, provides that in every Communal District there shall be one Judge of Instruction (who is a Judge of the Tribunal of First Instance), and to him, along with the *Procureur de la République*, is confided the Instruction of criminal proceedings, *i.e.*, the series of acts of procedure by which all the particulars relative to the crime are laid before the Tribunal. The Instruction always begins with the examination of the accused, and, with the information of the injured party, corroborated or otherwise by other witnesses and circumstances, forms the most material part of it ; and, when the procedure is complete, the Judge makes his report (for he cannot, like our Justices, commit for trial) to the Chamber of Council, who decide on the liberation or detention of the accused ; and, if the offence charged amount to a *crime*, as opposed to a *delit*, the case is remitted for further consideration by the Chamber of Accusations of the Court of Appeal, before the accused can be sent for trial before the Court of Assize.

In Scotland, when a prisoner has been apprehended, he is taken before a magistrate for examination, and his declaration is taken. The charge is read over and explained to him, and then he is cautioned in terms somewhat similar in effect to those employed by the magistrate in England. When the accused declines to answer a question put to him,

it is put down at full length, and then it is added, "Declares and declines to answer that question." The examination is understood to be conducted solely by the magistrate from information given him, but in practice it is done by the Procurator Fiscal in his presence, and is usually written down by the Sheriff Clerk; and when completed it ought to be witnessed by at least two witnesses, of whom the magistrate should be one, as without such evidence it cannot be put in at the trial. Being the declaration of the accused, it may be the means of proving innocence, as well as guilt, by leading to the proper sources of investigation during the "precognition," or preliminary examination of the witnesses; though unfortunately, as with us, it is only evidence *against* the accused, and never for him, and on the trial the prosecutor may put it in or not, as he pleases, whilst the accused cannot call for it—though, if once proved, he may insist on its being read.

That the natural method of beginning the *Instruction* of Crime by an examination of the accused is effectual, especially when there is a Public Prosecutor whose duty it is to make due enquiry into all the facts, is evidenced by the small percentage of acquittals in countries where such a course is pursued; while the infinite pains we take in England to prevent a prisoner from divulging anything that may be of service to the interests of truth, too often results in a failure of justice hardly calculated to present the practice since 1848 in the light of a reform, if indeed it does not cast grave doubts on the wisdom of abandoning the old practice. One of the chief incidental advantages of taking depositions is their being a test of a witness's consistency at the trial, and surely the accused should at least be afforded the same advantage by making his deposition under similar conditions and at the earliest moment before hearing the witnesses, if it is to be a real test—and that is hardly the present result.

It is often of great advantage, in the consideration of any subject, to obtain the views of other people—to see ourselves as others see us—if we would arrive at a correct estimate of it. In the year 1818, when the French Chambers were about to turn their attention to the revision of their Criminal Procedure, M. Cottu, a distinguished Counsellor of the Royal Court of Paris, was sent by his Government to England, to study the administration of Criminal Justice in this country; and armed with introductions to Mr. Baron Wood and Mr. Justice Bailey, the Judges appointed to go the Northern Circuit in the summer of that year, M. Cottu went the round of the northern counties during the Summer Assizes, 1819, in the company of Mr. Scarlett (afterwards Lord Abinger), in search of the desired knowledge, in addition to which he was afforded ample opportunities of studying the administration of Criminal Justice in the metropolitan Police Courts. In his report on Justices of the Peace and their duties, he says: “Finally, Justices of the Peace perform throughout their counties the duties allotted in France to *Juges d’Instruction*.” After describing the apprehension, &c., of an accused person, he proceeds: “The magistrate takes down in writing the prisoner’s declaration, together with the depositions of the plaintiff and his witnesses, as they are respectively elicited by the prosecutor’s or prisoner’s solicitor,” &c. . . . “Such is the system of Examination in England,” he adds, “which, as may be seen, is much inferior to that followed in France, although the latter, indeed, may be censured for its over-anxiety to produce the culprit’s conviction. No public officer draws up a certified statement of the nature of the spot, of the victim’s wounds, or of the burglarious entry. Whatever circumstances may be deemed necessary to arrive at the truth are drawn forth by the cross-examination of the witnesses. Scarcely a single question is put to the defendant; if asked to give

an account of himself, he answers, if he thinks proper, and the magistrate feels himself under no obligation to point out his contradictions, either with himself or his witnessess. Nor is he asked for any explanation of the charges resulting against him from the depositions. If able to clear them up satisfactorily, he does so, or is silent. All those pains taken in France with so much patience and acuteness, and almost always so successfully, are in England altogether neglected, or regarded as inquisitorial.

“The English appear to attach no importance to a discovery of the causes which may have induced the prisoner to commit the crime; they scarcely even affix any to the establishment of his guilt.”

While insisting most strenuously on the abolition of the interrogatory *at the trial* in France, and that, “as in England, no question ought to be put to the prisoner, except that of guilty or not guilty of the crime alleged,” he draws a distinction between the interrogatory at the examination and that at the trial. “As to the former,” he says, “I confess that, with the exception of the case of a prisoner caught in the fact, it does not appear to me possible, without its assistance, to frame an indictment. There is often nothing but the interrogating of the prisoner which can furnish the elements of it, and point out to the magistrate the witnesses who can give the required information. To abolish the interrogatory is almost to declare an impunity for all crimes to which there may be no eye-witnesses.” (*De l'Administration de la Justice Criminelle en Angleterre*, par Cottu, Paris, 1820).

It may no doubt be urged that the fact of our having successively abandoned the use of the interrogatory, first on the trial of an accused person, and then on his preliminary examination, is one of the strongest arguments against a recurrence to such a practice. But it must be borne in mind that the change was merely an experiment,

and that experiments, however well meant, are not uniformly successful; and, judged by the direction of recent efforts at Criminal Law legislation, the results of the experiments of 1848 have not been entirely satisfactory. Indeed, the tendency now is to go far beyond the old practice, and to re-introduce something very like the interrogatory on the trial, and even to abrogate that fundamental rule that a person on his trial for crime could not make any admission of facts against himself. In 1875 the Hon. Evelyn Ashley introduced a Bill having for one of its objects the rendering a prisoner a competent witness on his trial; and the proposal in the Draft Criminal Code is that "every one proceeded against by indictment for any offence shall be a competent witness for himself or herself upon his or her trial for such offence every such witness called and giving evidence on behalf of the accused *shall be liable to be cross-examined*, like any other witness on any matter though not arising out of his examination-in-chief" (sec. 471). True, none of these provisions would enable a prosecutor to call a prisoner as a witness against his will, and he would simply be *competent* and not *compellable* to go into the witness-box. But every one conversant with criminal practice knows what the result would be; how, in any case in which a prisoner did not submit himself to examination, the Jury would be told that he might have done so, but that, no doubt, for very good reasons, he had not chosen to avail himself of the privilege; that had he been able to give a satisfactory explanation there was the opportunity; that in the witness-box they might have cross-examined him, &c.—but he had not chosen to do so, and they must draw their own conclusions. If, on the other hand, he tenders himself as a witness, anything he utters in his own favour is almost tacitly assumed by the prosecution to be a fabrication, and he is forthwith, figuratively speaking, throttled both by Judge and Counsel, and,

in the end, should the wished for breakdown not be effected, or the desired answers elicited from him, he will probably be told "you may go down, sir," a perfectly polite request it is true, only—well the human voice is wonderfully expressive. The poor wretch would thus find his privilege only a burden, and a means of calling into play all the most objectionable features of the Interrogatory on the Trial—a practice which most people have condemned, and which the recent spectacle of the Guiteau Trial in America will not tend to raise in public estimation. The Criminal Code (No. 2) Bill, introduced in 1880, by the present Attorney and Solicitor-General, supplements the provisions of the principal Bill, by dealing with the position of an accused person during the preliminary enquiry. Section 188 proposes that in any preliminary investigation before a magistrate, *the accused "shall be competent to be, and at his own wish may be,* examined in the same manner as any ordinary person ;" while sec. 190 provides that *after* the examination of the several witnesses against a prisoner, or earlier, if deemed necessary, *the magistrate may, in his discretion,* take the examination of the accused. While the one section seems to make such examination dependent on the will of the accused, the other makes it depend upon the will or discretion of the magistrate, but, whichever way we take it, the fact remains that such examination is *not to be compulsory*, and, that when made, it is, as a rule, to be at *the end* and not at the beginning of the enquiry. It is further proposed that such examinations of prisoners should be conducted by the magistrate, or solicitor for the prosecution, in the presence of the other witnesses, and his fellow prisoners, if any, who may cross-examine him, and that, though not given on oath, his statement shall be deemed part of the evidence in the case, like the other depositions (secs. 189 to 195) and *put on exactly the same footing* (secs. 187 and 193).

These provisions were but the logical result of those of the Draft Code relating to the Trial, and are, of course, subject to most of the objections applicable to the former ; but still we call them in aid as showing that, in public estimation, the interrogation of an accused person is coming to be looked upon as quite consistent with fair-play, and as necessary to the elucidation of truth. At the same time, we certainly do not look with approval on such a sweeping change as is proposed by the Draft Code and the Code (No. 2) Bill, believing as we do that in practice it would lead to all the worst features of the Interrogatory as displayed in the French Courts now, and that all the good results of such a process are to be achieved in the initiatory stages by a reversion to the practice which prevailed in England prior to 1848, in the preliminary examinations before magistrates. But such examinations, to be of any value, must be *compulsory*, and at the *beginning* of the enquiry, and must not be made in the hearing or presence of the witnesses in the case and be conducted by the magistrate. In this way, partly by voluntary statement and partly by interrogation, according to Bentham, the most powerful instrument for the elucidation of truth and the detection of guilt, a statement may be obtained, at a time when there can be no suggestion, or possibility, of its being made to fit the evidence against the accused, and which may go far to clear or condemn the maker of it. That accused persons did not look upon their examinations as unfairly conducted may be gathered from such records of them as are to be found ; and in the trial of Count Coningsmark and others for the murder of Thos. Thynn, in 1682, it is said, "The lieutenant did often desire that their examinations before the justices of peace might be published with their other papers ; for then, by the questions put to them, all particulars were brought to their remembrance, which in the condition in which they were, they could not otherwise

recollect so orderly; and both he and the Polander did always refer themselves to those examinations, and to the last, averred the truth of them in every particular." (9 State Trials, 122).

Under the old practice as to preliminary examinations, whether by Justices or Coroners, important results as to the admissibility in evidence of their proceedings had been attached by the rules of the common law, the statutes themselves being silent on that subject. Being judicial proceedings, the depositions so taken were made admissible on the trial in the absence of the witnesses from any cause. But now, for the first time, the Legislature deals with the subject, and by Sec. 17 of the 11 and 12 Vict., c. 42, all depositions taken before magistrates, where any person shall be brought before them charged with an indictable offence, shall be taken on oath, in the presence of the accused and subject to his right of cross-examination; and they are then made admissible on the Trial on further proof of the death, or inability to travel from illness, of the persons making the depositions.

Bearing in mind that the object of the legislation of 1848 was to provide a sort of "Whole Duty of Magistrates," and that the provisions of the Act were specifically directed to the case of an accused being before them on a criminal charge, one would naturally conclude that its provisions were not applicable to any other proceedings, and that, in accordance with the maxim *expressio unius est exclusio alterius*, the only instances in which depositions taken before magistrates could be read as evidence on the trial would be those of the death of the witnesses or his inability to travel by reason of illness. But strange things are done in the name of the Common Law. As Kings and Emperors are fond of invoking the blessing of Providence whenever they have perpetrated an unusually bloody deed, so Judges are in the habit of making the much abused and long-suffering

Common Law the scapegoat, whenever they are about to decide something for which no other excuse can be found. In the case of a Coroner's Inquisition there is no one before him on a criminal charge, and if, in the result, any person is found guilty of murder or manslaughter, he does not become the person accused until *after* the finding, so that depositions before the Coroner do not fulfil any of the conditions of the 11 & 12 Vict., c. 42, so as to be admissible under it. And yet though that Act does not apply to Coroners' proceedings, the Judges now make all depositions dependent on the conditions of the 11 & 12 Vict., c. 42., sec. 17, for their admissibility in the absence of the witnesses, and thus necessitating a magisterial inquiry in every case of committal by the Coroner. In addition to this they have extended the words "inability to travel from illness" to inability to give evidence though able to travel, and added the further rule, that if a witness be fraudulently kept out of the way, his deposition may be read in evidence—of course in the name of the Common Law, and in the face of a positive enactment which had defined the rules under which this should be allowed. (*Reg. v. Scarfe*, 5 Cox, C.C., 243).

These results would be of little interest in reference to our present purpose, but that they throw considerable light on, and enable us the better to appreciate, the new views of preliminary examinations, under which their principal, if not their sole, object is assumed to be the perpetuation of testimony, and the examination becomes a sort of "dress rehearsal" of the Trial. That such a view is erroneous is clear from the language of the Statutes themselves, which, in express terms, direct the magistrate to form his opinion to commit or discharge a prisoner, on the evidence of those who know the facts and circumstances of the case *against him* (11 & 12 Vict., c. 42, secs. 17, 18 and 25), and the only object of section 5 of the 30 & 31 Vict., c. 35, is not

to assist the magistrate in coming to a conclusion, but "to remove all just ground for complaint" by prisoners that they were unable, by reason of poverty, to call witnesses on their behalf at the trial. There is, besides, the express decision of the Court in *The Queen v. Carden* (49 L.J., Q.B. 1), that it is no part of the duty of a magistrate to try the case, but that he has simply to determine whether there is a case on which the accused ought to be sent for trial—that the only issue he tries is whether a *prima facie* case is established.

That, however, such enormous views are entertained in reference to the duties of magistrates in these cases is apparent from the enormous length to which they are now-a-days dragged out, more especially since the passing of Russell Gurney's Act, which seems to lend some colour to the notion. Such a view was indeed put forward in express terms in *The Queen v. Carden*, when it was contended that the accused has a right to have everything of the facts and circumstances of the case taken down, not only those which tell against him, but everything which would help the Court which must ultimately decide to come to its conclusion—though Cockburn, C.J., promptly rejoined, "We shall need authority for that proposition." And it is constantly made matter of complaint, or grievance, by defending counsel whenever any evidence is brought forward at the trial which does not appear on the face of the depositions taken before the committing magistrate.

The preliminary examinations by magistrates in cases of indictable offences, which, in their inception, merely concerned the justification of the magistrate in detaining a person accused, and which now are co-extensive in their object with those of the Grand Jury, are simply made with a view to ascertaining whether or not there are *prima facie* grounds for an accusation. From the time of the Acts of

Philip and Mary down to Jervis's Act, the justices were to take the examination of the prisoner and information of those who brought him in of their reasons for bringing him there; and then, for the first time, Russell Gurney's Act enables evidence to be given on behalf of the prisoner either in reduction of the crime alleged or in establishing his innocence—these being the only matters material to the enquiry—but for no other purpose. Though, for example, on a charge of murder, evidence of provocation might be given, inasmuch as it might lead to a committal for a minor offence, viz., manslaughter, still no evidence could, *at that stage*, be given of insanity, or in mitigation of punishment, or as to the character of the accused, though these might become very material to the defence *at the trial*. This enquiry is, therefore, in no sense a trial of the case. Neither is its object the perpetuation of testimony: there is nothing in the statutes to warrant any such presumption, neither was there anything in the circumstances which gave rise to them to indicate that such was the intention of the legislature, and whenever that has been their intention they have manifested it in express terms as, *e.g.*, in sec. 16 of the 30 & 31 Vict., c. 35—though incidentally this is one of the advantages resulting from it. But this is not the only incident of the preliminary procedure: "There is the great advantage that if there is any material discrepancy between the statements of a witness on the trial and those made before a magistrate, that discrepancy may be pointed out, and the evidence of the witness established or materially shaken, as it ought to be in such an event. And, lastly, there is the very important advantage, that if a witness who has given his evidence before the magistrate dies or is too ill to attend, you have his testimony in a form in which it can be used" (Cockburn, C. J., in *The Queen v. Carden*); and it is because of this confusion of the incidental with the essential, that the former has come to be looked on as the

principal, if not the only aim of preliminary investigations. Hence the tendency of all such enquiries to travel into all sorts of irrelevant matters, and to be fought out as if they were the final trials of the case, and that we witness cases like those of *The Detectives (Reg. v. Meiklejohn and Others)*; *The West of England Bank Directors (Reg. v. Murch and Others)* and *The Directors of the Northern Counties' Assurance Association (Reg. v. Mills and Others)*, dragging on for weeks, and even months, before Committal, to the utter ruin, financially, of at least some of the accused who were ultimately acquitted on the trial, and swallowing up the lion's share of the £7,500, which on an average those prosecutions cost the country. And to what purpose all this expenditure of time, and money, and energy? A *prima facie* case must be arrived at very early, if ever; if there is a direct conflict between prosecution and defence, the magistrate cannot decide between them, but must commit; and, if the witnesses are in the land of the living, their bodily presence cannot be dispensed with at the trial, unless they are too ill to be brought there—not even if they run away and leave justice in the lurch. And yet we go on adding to the volume of depositions, till, at the end, the prisoner finds himself committed, and discovers that his legal advisers have swallowed the oyster and left him the shell, chiefly in order that, at the trial, his counsel may flourish a bundle of blue paper in the face of a timid witness, and tear his heart out over verbal differences. Unless a Criminal Trial is to become, like a Chancery case, merely a question to be fought out on affidavits, we fail to see the likelihood of any adequate advantage ever resulting from our present practice. It can never be the policy of our law to afford facilities for dispensing with the corporeal presence of the witnesses against an accused person, so long as it is its boast that, except for the purpose of issuing a warrant for the apprehension of an accused person, no evi-

dence is heard against him in his absence. And as, at the trial, you have to begin *de novo*, and the depositions go for nothing, the use of depositions there is in a sense a contravention of the rule, and only resorted to as the exception. Even as a means of testing the consistency of witnesses, our own observation leads us to think that the importance of depositions is much exaggerated; the untruthful witness and the *alibi* voucher is always consistent—a great deal too much so—and it is usually the *bonâ fide* witnesses who differ, in detail, as to occurrences that they have witnessed; while the preliminary canter at the Police Court shows the *faitors* where the weak points lie, and these are duly strengthened anent the Trial. Neither is any great saving of time effected by this first trial, in which the whole thing is rehearsed—when you collect all your forces, assign them their allotted positions and otherwise manœuvre them; in the case of the great Turf Frauds (*Reg. v. Benson and others*), after many weeks of preliminary enquiry, the Trial lasted *ten days*; similarly in that of the Detectives (*Reg. v. Meiklejohn and others*), the trial lasted *twenty days*. On the other hand, this is what happened in the case of the City of Glasgow Bank Directors, in Scotland, where a different system prevails: The Committee of Investigation published their report on the 16th October, 1878, showing a deficiency of over six millions, and on 19th (Saturday) the Directors were apprehended. On the Monday they were taken before the Police Court, Glasgow, and remitted to the Sheriff on a charge of fraud, and on the 29th October they were further charged with stealing Bills left for collection to the amount of £20,000, and were then formally committed for trial. On Monday, 20th January, 1879, the trial began in the Court of Justiciary, at Edinburgh, and it terminated on the 31st January, 1879—having lasted in all *eleven days*, though fifty-two witnesses were called for the prosecution and twenty-one for the defence.

We do not mean to assert that there may not be many cases of so simple a nature, and where the enquiry is so short, that our remarks would not be applicable; but undoubtedly, whenever the case is at all complicated, or of any importance, when you have an enquiry lasting over weeks, it frequently happens that an accused person finds his resources exhausted in fighting this preliminary battle, which, much to his chagrin, he finds goes for nothing, and that he must begin the whole business over again with an empty purse, and the loss of that advice which might then be of service to him.

In face of the great cost of criminal prosecutions in this country, a large part of which is attributable to the protracted preliminary investigation which, as a general rule, is utterly useless for ulterior proceedings, it becomes important to enquire whether it may not be possible to curtail these and devise other means of collecting the evidence, without sacrificing efficiency, or entailing hardship on prisoners. And, in this quest, it is obviously instructive to see how such matters are managed when a different system is pursued. In Scotland the preparation of the case (other than the examination of the accused already described) or *precognition* of the witnesses, is entrusted to the Procurator Fiscal, or Public Prosecutor, by whom the witnesses are privately and separately examined—but not on oath, except under certain circumstances—and their statements so obtained, and signed by them, cannot afterwards be used against them or be shown or read on the trial. But when there is reason to fear that an important witness may die before the trial, an application, founded on a medical certificate, is made to a magistrate to have his deposition taken before him on oath; and such deposition, signed by the magistrate, may, if proved by two witnesses, be read at the trial, in the event of the death of the witness—and the same course is open to the prisoner with reference to his

witnesses. In order to warrant this procedure it is not necessary that the witness whose deposition it is proposed to take should believe himself to be dying; neither is it confined to those who have been injured by crimes of violence, but it extends to other witnesses—parties other than the party injured—whose lives are in jeopardy. Finally, when the case is completed, the Indictment, which resembles an *acte d'accusation* rather than our Indictments, and sets out all the facts alleged against the accused, together with a list of the witnesses, must be lodged in Court for the inspection of the prisoner, who, if he intends to call witnesses, must furnish a similar list to the prosecution. This, it will be observed, differs but little from the preliminary proof which every prosecuting solicitor has taken before bringing his witnesses into Court, and if, as a rule, the getting up of the case in England stopped there, a very great saving both in time and money would be effected—after the stage at which a *prima facie* case had been established. The process is not altogether unknown in England now; the phrase “Additional Evidence” is not unfamiliar to those who practice in Criminal Courts, and is a great deal more frequent now than it used to be, especially in those jurisdictions where municipal authorities pose as public benefactors, and undertake the prosecution of crime at an average price per case. And though, formerly, the calling of witnesses who had not been examined before the magistrates, was invariably made the subject of animadversion by defending counsel, they now take it kindly, whenever the names of the witnesses, and the substance of what they are expected to prove, have been served on the prisoner or his advisers—as indeed, without this formality, their evidence would not be admissible, according to the ruling of *Willis, J.*, in *Reg. v. Stiginani* (10 Cox C.C., 552).

If then where a *prima facie* case was reached (which it usually is on the prosecutor's evidence or little more)

all the rest were put on the footing of additional evidence, and a copy served upon the prisoner a reasonable time *before trial*, he would be in as good a position as now, when he can only have such copy by payment, though he can inspect the Indictment gratis. Neither would it conflict with the cherished principle that an accused is entitled to be confronted with his accusers *at the Trial*, such violation being much more likely to be arrived at by the sworn deposition and perpetuation of testimony system, at present in vogue. Hitherto it has been open to an accused person to get up the evidence for his defence in any way that he pleased—to give no notice of the names of the witnesses or nature of the evidence to the prosecutor; and generally, whatever its nature, to spring it on the other side at the last moment—subject only to this, that he had to pay the expenses of his witnesses, unless he had called them before the committing magistrate, and had them bound over. The prosecutor, however, enjoys no such advantage, but is bound to disclose the whole of his evidence, as a condition precedent to its admissibility on the Trial, in order that the accused may have the opportunity of testing it and the character of the witnesses. Why then should evidence for the defence not be subject to the same conditions, and equal facilities be afforded for testing the truthfulness and characters of the accused's witnesses? And yet, subject to not getting their expenses allowed, a false *alibi* may be set up and supported by the most untrustworthy witnesses, and the desired result may be achieved, before the other side has the time to obtain any information regarding them. Inquiry into the characters of the witnesses is the great remedy recommended by Bentham for the abuses inseparable from *alibi* evidence, and is often the only means of attacking a skilfully concocted defence of this kind—how skilfully such *alibis* have been arranged, such trials as those of Major Wainwright, &c., &c., attest.

In fairness, then, an accused should be bound to serve a list of the names of any witnesses he proposed to call, and the nature of the evidence they were expected to give, on the other side, as a condition precedent to their being called, and to having their expenses allowed by the Court.

We are aware that in making such suggestions we are likely to excite the ire of those who support the present system as the most perfect that could be devised, and may be told that they are unfair, un-English, &c., on the tacit assumption that the magisterial inquiry is a trial, instead of being, as it is, merely the preliminary to a trial—though they can hardly allege that the alterations suggested would be *impracticable*, seeing that we have just shown that they are practised even more thoroughly than we propose, north of the Tweed. But we are told that one great merit of the present system in England is that we get the evidence in a form in which it can be made available afterwards should anything happen to the witnesses before the trial. A more expensive and circuitous way of securing such a small result it would be difficult to devise, in the face of the fact that the Legislature has provided what might have been, and doubtless was intended to be, ample, speedier, and cheaper means of arriving at the same result. At present, the most voluminous depositions may be taken, and then, unless the witnesses die, or are too ill to travel, they are practically useless on the trial. But even these contingent advantages were only obtainable where the accused was in custody, and brought before a magistrate on a specific charge, and the inconvenience of such a state of things does seem to have gradually forced itself upon the attention of the Legislature. In 1867 an Act was passed to “remove some defects in the administration of the Criminal Law;” and amongst the defects then enumerated and professedly dealt with, was the fact that it might frequently happen that a person dangerously ill and unable to travel might be

able to give material and important information relating to an indictable offence, which it was highly desirable, in the interests of truth and justice, to perpetuate and make available in the event of the death of the informant, and yet that it might not be practicable to take it under sec. 17 of the 11 & 12 Vict., c. 42. Section 6 of the 30 & 31 Vict., c. 35, accordingly provided that, when under such circumstances a medical man certified that the person was unlikely to recover, his evidence might be taken by a magistrate, and if any person has been committed or bailed for the offence in reference to which the evidence has been given, the evidence is to be returned to the Assizes or Sessions with the other depositions. In all other cases (which could only mean those in which no one was in custody, or committed, or bailed) the evidence is to be sent to the Clerk of the Peace and filed by him of record; and afterwards, if a person is put on his trial for the offence to which such evidence relates, it may be read as evidence. Had the section stopped here, the contemplated benefit would have been secured; but, unfortunately, through tinkering in committee, conditions were added as to giving notice to the person against whom the evidence was to be used, previously to the taking of it, which practically reduced such evidence to the same conditions as depositions taken in the ordinary magisterial inquiry, and rendering it impossible for the statute to have operation in the case of an accused person keeping out of the way, *i.e.*, in the only case in which it was required. *Reg. v. Quigley* (18 L.T., N.S., 211.)

The only way, in fact, in which such evidence could usually be made available would be as *dying declarations*; but these, according to English practice, are only admissible in cases of *homicide*, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declaration; and hence, in cases of robbing, administration of drugs with intent to

procure abortion, and numerous other cases of daily occurrence, the dying declarations of the persons robbed, &c., would not be admissible in evidence.

Dying declarations are admitted on the principle—

“ What in the world should make me now deceive,
Since I must lose the use of all deceit ? ”

But surely if the solemnity of the occasion is such as to silence “ every motive to falsehood,” as Eyre, C.B., has put it, in reference to the circumstances of a person’s death, the motives to falsehood must be still more effectually silenced in more trivial matters where the feeling of resentment or revenge must be weaker and where all hope of benefit is equally gone.

These declarations are rendered still less available by restricting their admissibility to those cases in which the declarant has not only been in actual danger of death, but has had a full apprehension of his danger at the time of making his declaration. It is always exceedingly difficult to determine when a person has abandoned all hope of recovery, and, in most cases, the expression of such a belief is but an echo of what the doctor has told the patient ; and, we venture to think, that the rule might with advantage be made more elastic, and more dependent on the medical opinion than it is. With such extension of what constitutes a Dying Declaration, and its application to cases other than homicide, and witnesses other than the party injured included within its operation, an important step would be taken towards securing the perpetuation of testimony in those cases in which it is most desirable to obtain it, and which our present rules of evidence and legislative enactments fail to secure.

Such sweeping changes may *seem* to be a complete *départure* from all the traditions of English criminal practice, and we may be asked if we are prepared to recommend the

adoption *en bloc* of the Scotch and Continental systems of Criminal Instruction, and to have the whole of it conducted *au secret*. We frankly avow that the disadvantages of such a system, in our opinion, far outweigh its advantages, and that the publicity attending such proceedings in England is often the means of producing important evidence that otherwise would be unattainable. All we advocate is a return more nearly to the ancient practice, a restriction of preliminary enquiries within their proper limits, and the more general adoption of means already available, for the purpose of saving time and expense, without any sacrifice of efficiency or fairness.

We are entirely opposed to secrecy, as a general rule, in such investigations, and think that when once an accused person is *in custody and has been examined*, no advantage is to be gained by it, and that the evidence establishing the *prima facie* case should be given publicly. But that is very different from saying that the whole evidence should be completed in that way, and public time wasted and expense incurred, in doing that which could as well, and as fairly, be done otherwise at much less cost; a much fairer method than that which represented the ancient theory of the Criminal Law and which, with some exceptions, is still available.

"A crime having been committed, there are, say the Criminal Code Bill Commissioners, at present four entirely different modes of proceeding against the accused person. He may be taken before a magistrate and committed for trial; he may, except in a few cases, be indicted by a Grand Jury without being so committed; he may, in the case of homicide, be committed and tried upon a coroner's inquisition; and in cases of misdemeanour he may be put upon his trial by a Criminal Information, filed either by the Attorney-General *ex-officio*, or, if the Queen's Bench so orders, by the Master of the Crown Office, at the instance

of a private person injured " (Report of Criminal Code Bill Commission, p. 32).

The Grand Jury represents the ancient theory of the Criminal Law (and the remark may be applied to the remaining modes of procedure), and they are still, in theory, the sole accusers; and, with certain exceptions, any one can send up a Bill before them accusing any person of any crime whatever, and the first intimation such person receives of the charge, may be his arrest to take his trial, and his first knowledge of the evidence, when he is in the dock, and the witnesses in the box, at the Sessions or Assizes. The Grand Jury was the original tribunal of preliminary investigation, whose whole proceedings were secret and *ex parte*—a secrecy zealously guarded by law, and assisted by the Jurors themselves, and therefore the abuses to which it led, the facilities it afforded for the perpetration of oppression and fraud, may be referred to as the probable consequences of the adoption of completely secret enquiries now; and what these abuses are, has been already indicated by us in former issues of this Review.

That the examination before magistrates is the fairest mode of proceeding is admitted even by the Criminal Code Commissioners, and they propose that, under the Code—when the good time comes—as a rule, no one should be indicted without a preliminary enquiry before a magistrate. Still the superannuated old tribunal of the Grand Jury is to obstruct the fairway, and be left to perpetuate its traditional abuses, very much as if we were to revive the decrepit old watchman with his lantern to do the duties of our modern police; and this solemn, one-sided farce, secretly acted behind the back of the accused, is still to succeed the public enquiry in the presence of all parties concerned, as one of the regular steps in a prosecution—such proposed steps being (1) the arrest and taking before a magistrate; (2) the preliminary hearing; (3) preferring

the indictment to the Grand Jury; (4) the trial; (5) proceedings by way of appeal.

Fortunately the usual result of a Grand Jury's action is *only* to encroach on the time of witnesses, and to swell the costs of prosecutions; and this being "Merrie England," whose wealth is inexhaustible, where poverty is unknown, and taxes press lightly, the ratepayers may possibly not grudge their quota to the Consolidated Fund, in order that country gentlemen may feel their personal importance enhanced by being called on to take a part in the administration of justice by nodding approval of a magistrate's discretion, varied occasionally by the consciousness of their having been practised on by the "uneasy classes." In any case, however, whether with or without this intermediate investigation, the first steps in a prosecution, the arrest and hearing before a magistrate, must always occupy the first importance in the estimation both of accused persons and of the community; and it is to that that we must look for the efficiency of our criminal procedure. That the tendency of preliminary investigations as now conducted is to assume the form of a trial, without any of the finality or advantages of such, but with all its attendant expense, we have endeavoured to show; and that the advantages claimed for it chiefly result to those professionally engaged. We have also indicated that, in *theory*, the object of such enquiries is not to perpetuate evidence, but simply to establish a *prima facie* case or accusation of crime, and that the legislature has provided other means for the former purpose, and we have endeavoured to point out a method for more effectually securing those objects, and at less cost. That the adoption of our suggestions might tend to encroach upon that halo of sanctity that has hitherto surrounded a man whenever he became a criminal in England, and render society a little less helpless in his presence, by making more use of his services in investi-

gating the charges against him, we admit. The object of all such enquiries is to arrive at the truth, and we can see no valid reason why the accused should not be called on to assist in such investigation, especially in the primary stages, and the Interrogatory applied to him, the more so as the truth may make as strongly for him as against him if innocent. An honest man can never object to tell his story, and a dishonest one is not entitled to cast unnecessary difficulties in the way of arriving at the truth. At the same time we think there is a great difference between a preliminary investigation and a trial, and very much doubt the expediency of even indirectly forcing a prisoner into the witness-box to be cross-examined at the trial. Preliminary examinations before magistrates, as now conducted in England, are fair, in the sense that they are scrupulously and Quixotically anxious to protect the accused, even from himself; but unfair to the public, whom crimes chiefly affect, by throwing unnecessary difficulties in the way of proving crime; and their publicity is of immense advantage in fostering the public confidence in them. But the undue length to which they are often protracted, and the expense attending them—sometimes entailing ruin on the accused—without any adequate advantages, are, in our opinion, blemishes which ought to be removed, and our object has been to point out how best to do so without doing violence to the system, or sacrificing the interests either of the individual or of Society.

JOHN KINGHOEN.

III.—CONSTITUTIONS OF THE OLD AND NEW WORLD.*

IN days when almost every Institution, however venerable, is spoken of as being on its trial, it is, perhaps, not too much to say that Constitutions and Constitutional Government are on their trial.

Not that Constitutions have ceased to be framed, or to be "recast"—a phrase often of doubtful import—or to be a subject of interpretation for the Judicatures severally com-

* *Lieber's Hermeneutics*. Third edition, with the author's last corrections and additions, and notes by W. G. HAMMOND, LL.D. St. Louis: F. H. Thomas. 1880.

The Theory of our National Existence. By JOHN C. HURD, LL.D. Boston: Little, Brown & Co. 1881.

Leaves from a Lawyer's Life Afloat and Ashore. By CHARLES COWLEY, Judge Advocate, S.A.B. Squadron. Lowell, Mass.: Penhallow Printing Co. 1879.

The General Principles of Constitutional Law in the United States of America. By THOMAS M. COOLEY, LL.D. Boston: Little, Brown & Co. 1880.

The Election and Naturalization Laws of the United States. By FLORIAN GIAUQUE. Cincinnati: Robert Clarke & Co. 1880.

North American Review. New York: D. Appleton & Co. Nov., 1880, Art. "The Monarchical Principle in our Constitution." By the late Hon. W. BEACH LAWRENCE.

Southern Law Review (St. Louis, Mo.), Aug., Sept., 1880, Art. "The Influence of European Speculation on the Formation of the Federal Constitution." By W. T. BRANTLY.

Les Constitutions Européennes. Par G. DEMOMBYNES, Avocat à la Cour de Paris. Paris: Larose et Forcel. 1881.

Del Governo Parlamentare di Gabinetto. Per ANTONINO ROMANO-CATANIA. (Art. in *Circolo Giuridico*, Palermo. 2^a Ser., Nos. vii. and viii., for July and August, 1881).

Annuaire de Législation Etrangère. (Published by the *Société de Législation Comparée*. Paris: Cotillon), for 1879, 1880.

Annuaire de l'Institut de Droit International. (Bruxelles: Lib. Muquardt), for 1879, 1880.

petent. All these various processes are going on now as they have been going on, more or less, since first Constitutions grew into being, and they are likely to go on for some time to come. We might say, "*après nous, le déluge*," and fold our hands to sleep. But we should be sleeping, probably, on the edge of a volcano, and we think it wiser, and better policy, and more loyal to the theory of Constitutional Government to consider some at least of the numerous questions that present themselves, before it is too late to do anything else than to accept the inevitable, in what shape soever it may come.

We have before us a mass of details concerning Constitutions written, and Constitutions unwritten; Constitutions of the Old World and of the New World; Constitutions with Kings, and Constitutions abhorring the name of a King; Constitutions that have grown with the slow growth of an old and long self-governing country, such as our own, and Constitutions of yesterday, such as those of Bulgaria and Eastern Roumelia. We have also Constitutions in a state of transition, like that of Egypt, tending to we know not what. In most of these very diverse works, whether most nearly akin to works of nature or of art, there is generally to be found some trace more or less distinct of the common element of Representative Government. The amount conceded varies greatly, like the bases on which the several systems of Representation rest. But some sort of Representation, some notion, however rudimentary of Self-Government, is present either on or just below the surface. Nor could it be otherwise, if we understand Constitutionalism aright. But even Statesmen and Diplomats have not always understood Constitutionalism aright, and too frequently, even in the present day, have been found to propound a servile imitation of some existing Constitution, very good in its natural home, and set it down to work as it may under circumstances differing at

almost every point. This is not Constitutional Government; it is usually either a sop to the Diplomatic Cerberus, or a net in whose meshes Diplomacy has caught itself by reason of its over-cleverness. Sometimes, but more rarely, it is, as was the case, we think, with Midhat Pasha's celebrated Ottoman Constitution, the best attempt that can be made by a falling State to save itself from utter collapse. In Midhat Pasha's case we have always believed the attempt to have been an honest one. That it could succeed, we very much doubt whether its author himself believed possible. But although the Constitution itself is for all practical purposes defunct, and its author, if still alive, is in exile, we believe that the work done will not be so wholly lost as it may at the present moment appear. For we cannot shut our eyes to the fact that the day for the lowering of the Ottoman Standard on the European side of the Bosphorus is ever nearer and nearer at hand, and we must perforce think of what is to take its place. With us, from our present point of view, it is rather a question of Government than of Standards. If justice could be done equally to all men, of all creeds, under the Ottoman Government, we should not desire to hasten the day of its removal. But nothing that we have been able to see in the conduct of the present Commander of the Faithful gives us any hope of so peaceful a solution of the Byzantine portion of the Eastern Question. Therefore we think that when the changes comes to pass, the Power, whatever its name, that takes up the inheritance of the New Rome, will have to consider what are the existing local elements of Self-Government, to be fostered and developed with the Phoenix-like new life that must yet dawn for Byzantium. In that day it is almost certain that recourse must be had to the old law, and the new Constitution,—to the old law which the seven-hilled city of the Bosphorus gave to the Roman World, and to the new Constitution which Midhat Pasha

devised for all that remained of the Roman World under the rule of the Ottoman Padishah. But it is not in the Old World alone that Constitutionalism is an important factor in the life of the peoples of the earth. Beyond the world-encircling Ocean of Homer, in an Atlantis which draws kings of men "from the Log Cabin to the White House," Constitutional Government prevails, and Constitutional questions are debated in the Courts as well as in the Senate. And the problems with which American Constitutionalism has to deal are full of instruction for us, different in many respects as are our conditions of life. The entire framework of the American Constitutional machinery, it seems to us, is of a nature that must necessarily often give rise to such problems, and they will, no doubt, in the Future as in the Past, often be very difficult of solution. All we can say is that we trust the internal peace of the Union will never again be disturbed as in the Past. But the Past, if we read it carefully, contains warnings for the Future. State Rights are not a figment, nor are they in themselves opposed to Federal Rights: rather are they, we should argue, the necessary basis of Federal Union. Of course, many and various views have been and continue to be propounded on the nature of the conception which underlies the Federal Government, and the language of American writers and of American Courts has not always been consistent. We doubt whether it could well have been otherwise. For the problems which the framers of the Constitution of the United States had to solve lay far deeper than the surface controversy, which, in these days, it has pleased some English writers to make merry over, as to the President's honorary designation, and whether it should be "His Excellency," or "His Highness." In this matter, as in other and weightier matters, the common sense of the nation prevailed, for in truth the name of the office itself should be held to be the President's highest title to honour. He

has not needed the Royal designation of "Highness" in order to wield, during his tenure of office, a power in many respects greater and more uncontrolled than that of most European kings. Under such circumstances, it could matter little what his fellow-citizens called him. His real power could not fail to make itself felt. To an ordinary English eye it would probably seem strange to read the title of one of the last contributions to Political Science made by a distinguished American jurist, the late Hon. W. Beach Lawrence. Writing in the *North American Review* for November, 1880, the subject which he proposed to himself for discussion was the "Monarchical Principle" in the Constitution of the United States. The article is one full of valuable matter for the student of comparative Constitutional History, if we may so term that branch of Political Science with which we are here concerned. It should be read side by side with an article in the *Southern Law Review* of slightly earlier date (Aug.-Sept., 1880), by Mr. W. T. Brantley, on the "Influence of European Speculation in the formation of the Federal Constitution." For the two articles treat the same subject from different points of view. Mr. Beach Lawrence marshals the various features in the Constitution, which show forth the magnitude of the Presidential office, and says, probably with great truth, that "all testimony concurs in assuring us that an office of this magnitude would not have been created unless Washington had been intended to fill it." But then it should, we think, be remembered that it must have been quite clear to the minds of those who drew up the Constitution that Washington could not live for ever, here below. We are therefore compelled, it would seem, to leave a margin, which the mere insistence upon the fact of Washington's dominant personality would not bear, for a something intentionally left vague in the declarations of the American Constitution regarding the Presidential office. There were, doubtless, as

Mr. Beach Lawrence points out, many persons in the revolting Colonies, who, although going with the revolt on abstract Legal and Constitutional principles, not only had no objection to a Monarchical Government in itself, but even actually favoured it. And the seeming contradiction in the position of such persons we should hold to be apparent only, and not real. But it rather cuts, at least to our mind, at the root of anything like a "Monroe doctrine," that such a favourable attitude towards Monarchy should have existed in the very earliest days of the separation from the mother country. For it would certainly go far to show that in the minds of the Fathers of American Independence, that Independence was so far from being opposed to Monarchy in the eternal fitness of things, that it was quite a question whether the Monarchical form might not have been adopted in the new Federation. The President would then have been, we suppose, a sort of "Kaiser in America," enjoying a perhaps somewhat ill-defined pre-eminence over the rulers of the several sovereign States of the Union, much as the "Kaiser in Deutschland" exercises his pre-eminence over the remaining sovereign States of Germany, whose separate existence is a fact side by side with the other fact of their union in the German Empire. But, from whatever cause, this is not what actually was done in America. On the whole, however, what was done does seem to have been loosely done, with what we may perhaps call a studied carelessness. Had any other man than Washington been the probable, or rather the destined, first holder of the Presidential office, we agree with Mr. Beach Lawrence and John Quincy Adams, the passages of the Constitution declaratory of the President's powers would probably have been framed in much more definite language. "The establishment of justice," Adams observes, in his discourse on the Jubilee of the Constitution, "in the intercourse between the nation and foreign powers was thus pre-

eminently committed to the custody of one man, but that man was George Washington." This was, under the circumstances, very natural ; whether it was equally wise may be a question. For the vagueness originally written in the Constitution has remained in it to cause much conflict of opinion in later times. It is matter for congratulation that so little advantage has been taken of it during the past century. Else the liberties which the Colonies were in arms to preserve might have been lost to them in subsequent years through their own want of care, or, to put it differently, through their too great trust in human nature. Foreign critics saw the danger which the Americans, perhaps designedly, did not see. The Duc de la Rochefoucauld, says Mr. Beach Lawrence, wrote to Franklin in 1789, expressing his surprise, in view of the attempts then being made to restrain the powers of the Monarch in France, that the Americans should have given such unlimited scope to an elective Chief Magistrate, especially to one whose re-election for life was possible. Franklin defended the re-eligibility of the President. Mr. Beach Lawrence significantly notes that the elder Adams regarded the Constitution of the United States as forming a Government "more properly to be classed among monarchical than democratic governments." Perhaps after his visit to the United States, Mr. Freeman may be induced to take up the thread of his unfinished work on Federal Government, and tell us what he thinks on this subject. Mr. Beach Lawrence, it is evident, held strong views on the point, for he says plainly that "in determining to create a national government, to consist of an Executive, Legislative, and Judiciary, the [American] Convention seem to have gone back for precedents, as to the first-named, to the times of the Plantagenets and Tudors, without regard to any of the modifications of the royal authority in modern times." The reason for this strong language may

be best seen and appreciated by considering the words of the Constitution itself: "THE Executive power shall be vested in a President of the United States of America." We have simply followed John Quincy Adams in giving the emphasis of capital letters to the definite article. How emphatic he considered it is shown by his own words introducing the citation. But (in contradistinction, as he had been remarking, to the language used in conferring the legislative authority), "the Executive authority is committed in unreserved terms." No such unlimited power is possessed by any constitutional king, or limited monarch. It is, of course, open to argument how far such a monarch is a monarch at all. It may be said that this limitation of his powers practically reduces him to the position of a figure-head, ornamental, perhaps, but scarcely useful. A recent writer, indeed, speaking of the position of the Sovereign of Great Britain and Ireland, in a little manual professing to be an "Outline of the British Constitution," goes so far as to suggest that we "reverence the Queen, not because she does much work in the State, but because she is a very grand personage, and it makes us feel grand to be able to have her and keep her on the throne." If we thought that this sentence had any pretensions, however small, to representing a view at all generally prevailing, we should indeed "despair of the Republic." But we take heart of grace to believe the contrary, and to believe also that the founders of the American Constitution did not leave their President's powers so undefined from any desire to "feel grand." *Absit omen !*

The difficulties concerning the nature and extent of the Presidential powers are not the only ones which surround that office. The long illness of President Garfield brought others to the surface, which were indeed latent in the Constitution, but had never been amended because, happily for the nation, the occasion for feeling the extreme incon-

venience to which they might give rise had not as yet occurred. But as it is always best to face a difficulty whether political or administrative, when once its full bearings are seen, we doubt not that it is well for the American people to have been brought to see the necessity for clear provisions in the Constitution for the carrying on of the work of the Presidential office whenever the President may chance to be incapacitated from personally carrying it on. Where such very extensive powers are confided to one man, the necessity of such a course needs no enforcing, though we must all of us wish that it had not so sadly been brought home to the nation, by one "*strangulatus pro Republicâ*."

Apart altogether, moreover, from questions connected with the Presidential office, there is a class of Constitutional difficulties constantly arising in the United States, which must always give rise to certain differences of judicial interpretation, according to the bent of the individual mind and according to the view which a particular judge, statesman, or publicist may take of the nature and extent of the Sovereignty attaching to a State in the American Union. Publicists, statesmen, and judges alike have differed, and no doubt will continue to differ, on the many points covered by that one epithet. They have differed, and apparently still differ, as to the initial question of the sovereignty possessed by the several States before they entered the Union, and they differ also on the amount covered by the term subsequently to their entering the Union. Mr. Hurd, in his recent very elaborate investigation into the "Theory of the National Existence," propounds some highly subtle and ingenious views, by which, however, we cannot say that we have been convinced. According to Mr. Hurd, the States which seceded were, *ipso facto*, deprived of their position as States, and reduced to the inchoate condition of Territories, a view

which we are entirely unable to accept. To our mind, as States they seceded, and as States they returned, whether the secession were in itself a justifiable act or not, a point with which we are not here concerned, and which it would probably, on the whole, be unprofitable to discuss at the present time.

We should not ourselves incline to regard the "perpetuity" of any Federation of States as more than a "common form" constantly employed in diplomacy as in State-craft, and in neither case importing, in reality, anything more durable than the period which may chance to be covered by the good will of the contracting parties. On resiling, the parties would necessarily revert to the *status quo*. In the case of the several States of the Union, that *status*, as we understand it, was that each of the States which had declared itself independent of the mother country was sovereign and independent. The formation of the Union was itself the act of the several sovereign bodies, framing for themselves a bond of union and a common political administration and foreign representation, while expressly reserving all such rights of sovereignty as were not expressly delegated to the common administration so created. But, unquestionably, in the case of several important administrative functions which were delegated to the Federal Government, there was a vagueness, perhaps it may have been a studied vagueness, which has kept many points still open to a varying interpretation. Each State, it is admitted, regulates its own police administration. The Federal Government, it is equally admitted, has delegated to it the regulation of commerce. But it is not always easy to decide whether a given act or regulation belongs more properly to the Police or to the Commerce of a State. Hygiene has been expressly held to be a subject of State Administration as coming under the head of Police, and the Federal Government, as Sir Sherston Baker has recently

shown in the pages of this *Review* (*Law Magazine and Review*, No. CCXLII., Nov. 1881), declares itself unable to intervene in such matters. What then, shall we say of Pilotage? Does it not seem *prima facie*, a reasonable contention that this, too, is a matter of the Police Regulation of every community, and as such should fall within the national province of State Administration? There is, of course, another side of the question, viz., that a matter of such public importance as Pilotage ought to be of Federal jurisdiction, being national, or indeed, we might say, international, in the range of its importance. That argument it will be seen, perhaps goes further, or is at least susceptible of being carried further than any nation with which we are acquainted is at present prepared to go. And though the value of the Pilot's services may be national or even international, it is such in proportion to his local knowledge, so that we seem to be thrown back hypothetically upon a local and territorial origin for his qualification. The question has very recently come before a District Court of the United States in the case of the *Clymene** (U.S. Dist. Ct., E.D., Pennsylvania, Oct. 12, 1881), and been there decided adversely to the State claim. It would be interesting to see this case carried up on Appeal, but we do not know that there is any such intention. In giving judgment, Butler, D.J., based his opinion on the assumption that "jurisdiction over the subject of Pilotage is conferred upon the Federal Government by the third clause of Article 8 of the Constitution, which provides for the regulation of commerce." And of course it cannot be denied that Pilotage does assist materially in the promotion of commercial intercourse. Therefore, there is, we admit, a Federal side to the question, but there is also, we should argue, a State side. In the case of the *Clymene* the point raised was rather a side issue, viz., whether a Pilot's license from one of two Riparian

States authorised him to act within the waters of the other, or whether the jurisdiction of each State was not exclusive, so that the Pilot should be liable to indictment by the State within whose waters he acted without her authority. In deciding against the *exclusive* character of the State license, the learned Judge no doubt decided in favour of the freedom of commercial intercourse, which would be conceivably very much hampered by penal restrictions on Pilots, preventing their action in waters other than those of the licensing State. But we are unable to agree with much of the line of argument by which the decision was arrived at. We do not ourselves share in the doubt which has been felt as to the power of the several States to exercise jurisdiction in matters of Pilotage until Congress should take action. The Federal jurisdiction itself is inferential, not express. It depends upon the construction given to the phrase "Regulation of Commerce." To sustain the State jurisdiction, says Mr. Justice Butler, it must be held that "the constitutional grant of authority to the Federal Government did not of itself oust the authority of the States." And this view, he admits, though it might seem to be illogical, is not inconsistent with what has frequently been allowed by the Supreme Court in similar cases, *e.g.*, by several of the Judges in the *Passenger Cases*, 7 How., 283; *Cooley v. Port Wardens*, *Ibid*; *Crandall v. Nevada*, 6 Wall., 35; *Gilman v. Philadelphia*, 3 Wall., 713.

The judges, however, who cited these cases in *Henderson v. Mayor of New York* (92 U.S., 259), it is fair to remark, also observed that this doctrine had always been controverted in the Court, and seldom if ever been stated without dissent: we think the circumstances justify us in holding the existence of two conflicting currents of opinion in the Supreme Court itself, and therefore that the question is really still an open one in theory, whatever it may be in

practice. And with such a divided house, if we have rightly interpreted the attitude of the Supreme Court, it may well be that the Pilotage question will not be brought up to that Court on appeal from the District Court of Eastern Pennsylvania. But there are other questions involved in Mr. Justice Butler's decision upon which the Supreme Court might decide without having to face an existing division of opinion. We confess we should very much like to know whether the Supreme Court would uphold the *dictum* that the waters of a Port are Federal, not State Waters, and whether the several States would like such a decision. If, as we believe to be the case, there are no Federal Highways on land (except, perhaps, the Highways within the District of Columbia), on what principle can there be a Federal Highway by water? And how, of all places in the world, can such Highway be within the territorial waters of a State of the Union? That such waters are "subject to common use" does not take away from their Territorial character or derogate from the Sovereignty within whose limits they lie. The "common use" is a portion of the right of innocent passage and access involved in the relations of Peace. As between the several States of the Union, of course, such "common use" is one of the incidents of that Union, determined, however, by war, in that case as in the case of other States enjoying such use. We, therefore, could not hold the Port of Philadelphia to be as Mr. Justice Butler held it, "constituted of the public waters of the nation," nor could we admit that it is only "by the grace of the general government" that the State of Pennsylvania is "allowed any independent views respecting it." When the learned judge says that before the adoption of the Federal Constitution, "Pennsylvania had no jurisdiction whatever beyond her territorial limits," we are at one with him in his language, but it is because that language

carries, we think, all for which we should contend. The Port of Philadelphia, we should argue, was and is strictly, within "her territorial limits," apart from any special questions as to bays. If such a question were now to be raised as to Delaware Bay, we apprehend that the claims of the United States to assert the territorial character of Delaware Bay would be based on the jurisdiction assumed to be vested in the two Riparian Sovereignities of the States of Pennsylvania and Delaware. In the case of *The Clymene*, the learned Judge, on the point before him, impartially swept both Sovereignities out of Court. The point itself, however, as we have remarked, was a side issue arising out of this wide and complicated question of State Rights. We should conceive that the right to license a Pilot might be held to be a part of the Territorial Sovereignty without being necessarily exclusive; though it was a part of the respondent's contention in the case to make it out to be exclusive as against the other Riparian State. But however we may look at this particular case, enough has probably been said to show how it illustrated the nicety of the point that frequently arises under a Federal Union of States with a written Constitution. There are advantages and disadvantages attaching to written Constitutions, and it is no part of our present undertaking to decide which way the balance inclines. We have simply to discuss what appear to us interesting points of Constitutional Law which are illustrated by both forms, as existing among our Transatlantic kinsmen and our Continental neighbours. Neither form is in our view, a panacea for all ills, nor is either form, in itself, a protection against all possibility of secession or subversion. A *coup d'état* may substitute the personal rule of a successful conspirator against the liberties of the nation under what is called the Republican form of Government, all articles of the written Constitution notwithstanding. And a nominal Constitutional Monarchy, with an unwritten

Constitution may find itself at the mercy of a Court of Star Chamber, while a written Constitution may be given one day and withdrawn the next,—as at Naples under the last Bourbon Kings,—or set aside by an Ordonnance or a Rescript, as in the case of Charles X. of France, and Frederick William I., Emperor in Germany and King of Prussia. We desire, therefore, to look with impartial eyes on both forms of Constitution. Mr. Hurd appears to us, as we have already remarked, to hold a very ingenious and very subtle theory as to Sovereignty, if we have rightly grasped it. The “Sovereign People” in his eyes, as we understand him, are a “Sovereign myth;” at least as regards the United States. There is, indeed, in his conception—again we must say if we accurately apprehend his meaning—only one Sovereign, the political entity called the “United States,” created by the Act of Confederation. Sovereignty in the United States is only held in and through this political entity, and without it there is no Sovereignty. On such a theory it is, of course, easy to see that secession involved the loss of Sovereignty, whether we call it State-lapse or State-suicide, though the latter of the two terms seems to us best to express Mr. Hurd’s view. We should like to know, on this view of Sovereignty, what Mr. Hurd considers to have been the position, juridically and constitutionally, of Rhode Island during the time that she remained outside the pale of the Union? Had she no Sovereignty? If not, what Sovereign powers could the other States, occupying exactly the same position both before and after their independence of Great Britain, confer upon the government of the Union? This it certainly seems to us, is a question which those who uphold such a theory as Mr. Hurd propounds ought to answer, and we cannot see that Mr. Hurd does answer it. We have nothing to do here with any consequences which may, whether legitimately or illegitimately, have been deduced from the perhaps somewhat old-

fashioned theory of State-Rights which alone commends itself to our reading of history as to our conceptions of political Science. The view that by the fact of the declaration of their independence each of the former colonies declared itself a Sovereign State is quite as old as the Declaration of Independence itself. We find this admitted by a very competent and unexceptionable witness, Mr. Cowley, formerly Judge Advocate, South Atlantic Blockading Squadron, in his entertaining and instructive "Leaves from a Lawyer's Life Afloat and Ashore" (Lowell, Mass., Penhallow Printing Co., 1879), pp. 175, 176. "When the Constitution was formed, their [the Southern] construction of that instrument was as common in the North as it afterwards became in the South, and those who contended for our modern interpretation of it resisted its adoption because it was open to that interpretation. In the Massachusetts Convention of 1788, the delegates from Middlesex voted 25 to 17 against its adoption. The vote of the whole Convention was 187 to 168—only a majority of 19 in favour of the Constitution in Massachusetts. Had the Constitution been submitted to a vote of the people at Massachusetts, it is highly probable that it would have been rejected. Seldom has a greater result depended upon so small a cause. The change of ten delegates from the Valley of the Merrimack would probably have defeated the adoption of the Constitution of the United States. Such a change would clearly have placed Massachusetts against that scheme of Government, and Madison, looking anxiously out of his Virginia home, wrote: 'The decision of Massachusetts, in either way, will decide the vote of this State.' Those views of State Rights and State Sovereignty which culminated in our Civil War, were as strenuously maintained by thousands of the men of Middlesex and other Northern counties, in 1789, as in Charleston or any other Southern city in 1861."

Thus writes Judge Advocate Cowley, citing an earlier publication of his own, a "Historical Sketch of the County of Middlesex" [Mass.], printed in a local publication, for circulation among those who might be presumed to be instructed in their own local history in the relation which it bore to the history of the Union. We think it may be claimed for the Judge that he is a disinterested witness, and that he was addressing himself to those who would be among the first to contradict him if he advanced a proposition contrary to the known facts of Massachusetts history. The history of Middlesex county at the time of the adoption of the American Constitution is to us full of significance. It illustrates very forcibly the narrow majority by which, in some places, the Constitution was carried, and it also illustrates the antiquity of that view of State Sovereignty which Mr. Hurd admits to be "logical and consistent," though he is opposed to it as being, in his opinion, grievously erroneous.

Dr. Lieber, in his *Hermeneutics*, has drawn attention to not a few of the points which are involved in Mr. Hurd's discussion of the *Theory of the National Existence*. And Dr. Hammond, in his valuable Notes to Lieber, has still further helped to set the issues in a clear light, whether we are able to agree with the views expressed by the learned author and editor or not. The questions of "Interpretation," "Sovereignty," "Constitutional Construction," "Written and Unwritten Constitutions," as dealt with briefly in the text, at considerable length in the Appendix of Notes, may be mentioned by way of showing the importance of the subjects treated. And that importance is equally great on both sides of the Atlantic. For, as Lieber rightly says (*op. cit.*, p. 40), "the freer a country the more necessary becomes interpretation." And *interpretatio vafer*, or "Artful Interpretation," is, as he further observes (p. 61), "not always immoral." Of this, indeed, a very curious

instance from the history of Iowa, while yet only a Territory of the Union, is given in a foot note by the Editor. It appears that by an Act of the Legislature of the Territory (Extra Session of 1840, sec. 8, chap. 29), it had been provided that "*none* of the statutes of Great Britain should be considered as law in this Territory." Hence there arose "grave doubts as to the common law itself." It was even doubted in a case of dower, says Dr. Hammond, whether the Statute of Merton had not been repealed by this sweeping section 8. Gone too, it might be thought, at one fell swoop, were the Statutes of Westminster, of Wills, of Uses, and many another famous landmark of English Legal History. But the Courts found a solution of their own for this serious, and probably very unexpected, difficulty. They gravely held, we are told, that by "Statutes of Great Britain" the Legislature could only have intended "those passed after the Union of England and Scotland in 1707, since no earlier Statutes were known by that title." And "as nobody had any interest in claiming that any of the English Statutes passed subsequently to the settlement of the Colonies in the reign of James I., were in force, this construction," the learned editor remarks, "satisfied the letter of the law without harming anyone (*O'Ferrall v. Simplot*, 4 Iowa, 381)." But the evil of what Dr. Hammond justly calls "ignorant legislation" might not always be so successfully remedied. We are far from unacquainted with some such evils in our own country, though they arise perhaps rather from our generally spasmodic, fragmentary, and too often hurried legislation, than from ignorance proper. Interpretation, indeed, is becoming daily a more frequent necessity among ourselves. Rarely does a Session close without some Act being passed simply to interpret previous legislation. The long-suffering Parliamentary Draftsman probably gets most of the blame, when in reality it ought to fall, as far as we can see, in most

cases, on Parliament itself. Bills are too apt to get so "tinkered" in Committee that their original introducers and draftsmen may well be supposed scarcely able to recognise the infant of their brain and pen. And, under such circumstances, it is little wonder if language which may have been clear enough in the first Draft of a Bill becomes hopelessly entangled as the process of "Amendment" goes on. No doubt the art and the science of Parliamentary draftsmen are alike capable of improvement. The same may be said of most arts and sciences. But it does seem almost hopeless to expect any radical improvement in this very important branch of Legislation until the Legislative machinery is itself put into better working order,—we might say, indeed, until order takes the place of the present chaos. The unquestioned and unquestionable fact that we have got our Constitutional machine, the Parliament of the United Kingdom, into such a state of disorder, is not a cheering reflection for any lovers of Constitutional Liberty. It is sure to be taken advantage of by the many who, from different points of view, are not friendly to Constitutionalism, and it may even lead those whose aspirations are towards Freedom to yield a reluctant assent to the view, which is certain to be pressed home, that the thing will not work. With a little judicious suggestion of the gradual but sure breakdown of the British Parliamentary machine, and an equally judicious application of *interpretatio vafer* to the existing Constitution, much may be effected almost imperceptibly, and the muzzle be applied before we are well aware that anything has been done to us.

Theoretically, it would seem, as far as the recent Berlin *coup d'état* has proceeded, it has proceeded by way of "Interpretation" of the existing Constitution. Ministers, says the Emperor-King, must, indeed, sign documents, but none the less are the decrees mine. I do not simply reign :

I also govern. The difficulties of the position now assumed by the Emperor-King will become more apparent, we believe, when the attempt comes to be made to apply the principles of the Rescript to the relations of the Emperor with the States of the Empire other than Prussia. In the Kingdom of Prussia itself—the gradually developed Mark of Brandenburg—in which the spirit of Feudalism is still far from extinct, the change of front on the King's part may even meet with a certain amount of approbation, at any rate from the Junker class. But in the Empire at large it can hardly be received save with displeasure, if not with open opposition. It is quite possible that the Clerical vote may, for a time at least, be gained by it. Rome may think her interests best served by what would practically—however called—be a despotic government, than by a government of parties and Constitutions. For of Constitutions, the Roman Curia has distinctly shown itself distrustful. Having, indeed, herself in 1870 set at naught the Constitution of the Latin Church, by what was unhesitatingly called, "*Ecclesiæ suicidium*," in the written opinions of distinguished bishops of her own Communion,* it is not to be wondered at if there is small love lost for Constitutionalism at the Vatican. A Parliamentary guarantee, says the Holy Father, is no guarantee at all. It is given to-day and may be taken away to-morrow. The vote of yesterday may be rescinded by the morrow's vote. Technically, of course, this is a proposition which we cannot deny to be in a certain sense true. But it is not the whole truth, neither do we admit that the case is much improved when resort is had, as the Pope would fain have it, to an International Guarantee. For apart from the difficulty generally expe-

* See Lord Acton's interesting "*Sendschreiben an einen Deutschen Bischof des Vaticanischen Concils*" (Nördlingen, 1870); and Friedrich's most valuable "*Documenta ad illustrandum Concilium Vaticanum*" (Nördlingen, 1871).

rienced in obtaining such a guarantee, when it is obtained the danger of repudiation is only removed a step further, it is not taken away altogether. What is true of National Parliaments is true also of International Conventions. A Parliamentary vote may be rescinded; an International Convention may be denounced, or the parties to it may consider that the circumstances have altered or that the particular contingency provided for has not arisen. Moreover, when a State has itself given assurances such as are embodied in the Law of Papal Guarantees, it is not likely to accede to the proposition that an International Guarantee is needed. However this may be, it would seem that the Clerical vote will in all probability be given to the German Emperor, clearly not without a *quid pro quo* in the shape of concessions in regard to the May Laws which the German people may find it difficult to interpret otherwise than as a stage on the road to Canossa. Perhaps the vote thus secured—if indeed it may be considered secured—was the principal aim of the Rescript. With the Chancellor of the Empire this may have been the case, if we may suppose him to have inspired the Imperial and Royal action. But it is at least possible that the Rescript was issued *mero motu*, and we apprehend in that case there would be no necessity to look below the surface for high political schemes. We should rather accept the Rescript as the frank expression of views which we believe the Emperor to have entertained as King of Prussia, probably also before his succession, and in any case long before his acclamation as “Kaiser in Deutschland.” It is the very sincerity of the document, from this point of view, which raises the gravest doubts in the mind as to the future of Constitutionalism in Prussia. And the same doubts apply to a great extent to the maintenance of the present cohesion of the German Empire. If the Rescript could be attributed to the Chancellor of the Empire, in the character of Prussian

Premier, we should probably, while equally unable to approve its tenor, feel able 'to regard it as a move on the political chess-board, which, if found in time to be a blunder, might be retrieved by another move. But if we are face to face with King William himself, by the Grace of God King of Prussia and of the Goths and Vandals, we can only conclude that the Prussian people—and the Goths and Vandals—must somehow or other themselves get the better of their king, if they feel their liberties menaced by the Rescript, as we should if we were in their position. Hitherto, of course, Prussia has been counted among limited monarchies, governed by Parliament in accordance with the Constitution. This is the light in which the Prussian Kingdom is presented to us by M. Demombynes, writing but a short twelvemonths ago. What will he have to say of it in his next edition?

It is true, no doubt, as M. Demombynes points out* that the Prussian Constitution has been frequently subjected to alteration since 1850. It is true also that the very success in war which superposed the German Empire on the Prussian Kingdom has necessarily created a Militarism which is closely akin to Cæsarism. Danger to the Constitution has therefore no doubt lurked in that very enthusiasm which made one people acclaim one Emperor. Now that the danger has come to the surface it may be met as an open foe. How it may best be met is a matter for the most serious consideration not only of the Prussian but also of the German people. King William does not deny the existence of the people. He rather professes to be acting as Shepherd of the People and *Pater Patriæ*. This perhaps affords some sort of basis for the peaceable solution of the problem now presented. But the problem is one which has not by any means always received a peaceable solution. The precedents referred to in the

* Constitutions Européennes, II. p. 572, *seq.*

Daily Press of our own and other countries are not altogether encouraging to the vision of Peace. The Revolution Settlement of 1688, though a comparatively bloodless Revolution, was yet not effected altogether without a struggle, or without leaving the seeds of future disturbance. And the overthrow of Charles X. in 1830, the immediate result of measures very closely akin to those of the King of Prussia in 1882, was a more complete defeat than it is perhaps generally taken to have been. We believe that in point of fact it laid the foundations of the present form of Government in France, though the historical links are in appearance broken by the interpolation of two other forms, neither of which succeeded, the reign of the "Roi Bourgeois" and the reign of the "Man of Sedan." Both those rulers were, we think, perfectly sincere in their attempts at carrying out their respective missions, as they understood them. But the foundations of the Republic were nevertheless, we hold, really laid in 1830. May it not be well to look to the lessons of History ere it be too late to profit by them? It will be observed that the primary result of 1830 was, to all appearance, the establishment of Constitutional Monarchy, and we do not at all forecast an immediate Prussian Republic.

There is, no doubt, in Prussia, as in other parts of Germany, an active and perhaps numerous Socialist party, which sometimes acts by itself, and sometimes coalesces with its apparent opposite, the Clerical party. Such a coalition is of course only temporary, and takes place only when the *Neri* are displeased with Prince Bismarck. The Socialist party, however, although able to find allies occasionally in strange quarters, is not, so far as it can be judged from without, likely to carry any considerable portion of Prussian or German feeling with it, as yet. What might happen under a strong revolution of feeling, such as conceivably might be aroused by action like that which

the head of the Prussian Monarchy is now taking, is a different question. It is possible that the party of Anarchy might see its opportunity in such a state of things. It is also possible that the attempt to take advantage of this opportunity might throw the Moderates,—the Constitutionalists, in fact,—back upon the Monarchy, even though protesting against its autocratic form as contrary to the Constitution. Yet it is also possible that none of these things may come of the present Berlin *coup d'état*. None the less really, however, do we judge it to be a *coup d'état*. None the less do we think that any such action, however it may be explained away, is a Revolution in the direction of Despotic Government. Of course the Rescript may be and is explained away; some of our own Press seems inclined to minimise it. The Vatican decrees have also been explained away, and minimised, until outsiders can only wonder that it should have been thought worth while to take so much trouble, and to risk the division which actually resulted, in order to effect something which, on the Minimist view, meant so little. We have met with clergy on the Continent who, themselves not originally friendly to the doctrine of the Constitution *Pastor Æternus*, have told us that they were quite alarmed at the way in which it was minimised. We are not sure that there was not good theological ground for this alarm. And we believe it would be as dangerous on Constitutional grounds to minimise the Berlin Rescript.

The natural meaning of the Rescript is Personal Government, and that, in the long run, however it may be for a time veiled under more or less of adherence to Constitutional forms, can only mean Absolutism. Ministers may be retained, as a sort of Royal Clerks, but they are practically nothing more. The acts of the Cabinet, says the King, are my acts: the Government is my Government. This may do for a time, as long as the acts of the Ministerial puppets do

not run counter to public feeling. But when there is a conflict between the two, and the people have learned the lesson sedulously inculcated by their King that the acts of the puppets are those of the wire-puller, and that he is himself that wire-puller, it cannot but be against the King, and therefore against the Monarchy, that the anger of the People will have to be vented. That day if it comes, as come it must, should the present line of action be persisted in, will certainly not be a comfortable day for the Prussian Monarchy. Not even the development of the Electoral Bonnet into the Imperial Crown will avail to save it in that day.

There have been, as M. Demombynes relates, several changes in the Prussian Constitution within the last quarter of a century. The tendency of those changes has been, on the whole, in the direction of a Free Constitution under a Limited Monarchy, with Parliamentary Government, and its corollary Ministerial Responsibility to the People through Parliament. But if the doctrines of the Rescript—whether the unaided resolution of the Imperial and Royal mind itself, or the astute suggestion of the Imperial Chancellor on political purposes intent—be accepted by Parliament as the true and only interpretation of the Prussian Constitution, the Prussian Landtag will practically have committed political suicide, and the Deputies might as well cease going through the form of attending in their seats. For the great *Ego* will be omnipresent and omnipotent. The Deputies of “my” People will only have to register the declaration of “my” will, expressed through “my” Ministers, who speak “my” words, as “I” direct them. *O Fortunatam Rempublicam!*

We can hardly be surprised that the Vienna Press should be found to take an adverse view of the situation in Berlin. For Vienna has good reason to know both the difficulties and the benefits of Constitutional Government, and the lengths to which a people attached to their National Con-

stitution may be driven to go in defence of it. And Vienna is also well situated for giving an impartial judgment as to the importance of the Berlin *coup d'état*. We are not disposed to think the case has been too strongly put when it has been said, as was said by the *Neue Freie Presse*, that the Rescript was a menace to Constitutionalism throughout Europe. Therein, indeed, lies its gravest feature. It is serious enough as a menace to the liberties of the Prussian people. It is more serious, by far, in the influence which it cannot but have throughout the German Empire. Every State of the Empire is, indirectly at least, threatened by it. No Constitutional relations could be kept up for any length of time with the States of the Empire, after the doctrines of the Berlin Rescript should have taken root. The solution of every difficulty, the answer to every complaint would naturally be "*quod principi placuit, legis habet vigorem.*" A simple solution, indeed, and a plain and ready answer,—from the point of view of the Emperor and his Chancellor. How far such a solution and such an answer are likely to satisfy even the Prussian people, long subject to the drill of a military monarchy, remains to be seen. The enthusiasm roused by the military successes of 1870-71, has by this time pretty well died out, but the burden of those successes presses upon the entire German people to this day. For the armaments which gained the victory must be maintained, lest the victor should be caught unawares, improbable as such a supposition may be. In the Prussian Kingdom this pressure is heavier than elsewhere. It will probably not be without its effect upon the attitude of the people towards the new scheme of Paternal Government put forth by the "*Pater Patriæ.*" The situation, as regards the Prussian monarchy, may perhaps even now be best described in the words recorded in the *Letters of Quirinus**

* Letters from Rome on the Council. By Quirinus. 3rd series. App. II., p. 840. (London: Rivingtons, 1870.)

to have been applied by a Cardinal to the result which he foresaw for the Vatican Council: "Mon cher," said his Eminence, "Nous'allons aux abîmes!"

IV. — THE ITALIAN FOREIGN MINISTER ON EXTRADITION.

THE widespread reputation of Signor Mancini, both as a statesman and as a Jurist, no less than the importance of the subject with which he has recently been dealing, seems to render it specially desirable to place the latest expression of his views before the readers of the *Law Magazine and Review*.

In October last, the Minister for Foreign Affairs for the kingdom of Italy appointed, by Ministerial decree, a commission charged with the task of "studying and drawing up a Draft Law of Extradition," to report by the beginning of 1882. The result of the labours of this Commission is not yet *publici juris*, at least at the time of going to press, but may not improbably be in our hands in time for an early number of the current year, if not actually for our next issue.

The institution of the Commission was marked by the composition of an elaborate State Paper, containing a succinct statement of the several methods by which the difficulties connected with the international aspect of crime might conceivably be met, and of the methods expressly preferred by the Minister. The Paper, which is, in form, a circular addressed to the members of the Commission, is printed at length in the pages of our able contemporary the *Rivista Penale*, Vol. XV., Nos. i. and ii., for December, 1881, and January, 1882, pp. 143, *et seq.*

Starting from the undeniable fact that the increased commercial relations between the various nations, the con-

stant tide of emigration, and the marvellous facility of intercommunication, all tend to render flight from justice more easy than of old, Signor Mancini proceeds at once to deduce the necessity to enlarge the sphere of the action of Penal Law.

The real question is how this may best be done. Two modes present themselves: the one, a Universal, Cosmopolitan, Penal Jurisdiction over every kind of wrong, by whomsoever done, and wheresoever committed; the other, which is the one that meets the Minister's approbation, consists in rendering the application of the principle of Extradition more general and more efficacious. Whatever the future may have in store for us in the way of Cosmopolitanism, the latter method, the application of Extradition, offers the only practical solution of present difficulties. For the place where a crime was committed is clearly the place where it can most easily and effectually be punished. There are the witnesses to the facts: there the injured party. Recalling the circumstance that although based in law on the duty which nations owe to each other, and the interest which they have in aiding the course of Justice, the practice of Extradition is nevertheless "relatively modern, Signor Mancini briefly sets forth the three phases or stages through which he conceives the practice to have passed. There are (1) the Empiric, (2) the Conventional, (3) the Legislative.

Under the first of these, Extradition is asked or not, granted or not, according as may seem best, without the limitations of any rule for its circumstances, modes, or conditions. This is the position which Extradition occupied while as yet practically almost unknown, in Antiquity, and during the Middle Ages, and while it was in antagonism to the Religious and Feudal *jus asyli*.

Under the Conventional phase, which in point of fact still prevails, although Signor Mancini regards its place as in pro-

cess of being taken by another system—Diplomatic Conventions render the application of Extradition a regular and constant instead of a variable and isolated fact. The Italian Communes, the Minister patriotically delights in remarking, were the first to conclude with each other Articles of Extradition, a position which they were early led to take up on account of the narrow limits of their several territories, and the difficulty of effecting captures. As a general factor in European practice, however, Extradition under Convention only reaches back to the middle of the last century. From that time to the present, Extradition Treaties have gone on increasing day by day, till the whole civilized world has, as it were, become one vast network of Conventions.

The continued application of the Conventional System has naturally caused the evolution of certain leading maxims which may be taken as principles regulative of Extradition both in National and International Law. Thus we find the maxim that a State does not surrender its own subjects (*connazionali*), and, again, that Extradition is not granted for Political offences (*per reato politico*). These principles have in some cases become the subject of internal State Legislation on Extradition, and so we arrive at the third, or Legislative phase.

Where such Territorial Extradition laws exist, the Executive may conclude Conventions with Foreign countries, but must conform their stipulations to the Territorial law. This system is, in Signor Mancini's view, at once the most reasonable and the most liberal. For one of the best guarantees which modern Constitutions have secured to the subject, he says, is clearly this, that he shall only be arrested and brought to judgment in the cases and by the methods prescribed by law. And although, from the necessities of the case, Extradition must be a subject of stipulation between Governments, it is surely prudent, he

argues, as well as logical, that the Legislative Power should intervene, if not with its sanction, at least with the imposition of certain fundamental principles which the Administrative Power cannot go beyond. And this the more that Extradition, from a purely administrative act, has acquired in a great measure, Signor Mancini considers, the character of a judicial act; and the persons whose Extradition is demanded are protected by certain guarantees in the shape of an Investigation, and an impartial decision on the circumstances, rendered by the Judicature. This phase of Extradition is best exemplified, His Excellency observes, in the practice of Great Britain and the United States, and with some modifications prevails also in Belgium and the Netherlands. It also received the approbation of Italy, Signor Mancini justly reminds us, in the vote of the Parliament of 1876, when the Chambers passed the first part of the Draft Penal Code, presented by him while Minister of Grace and Justice and Keeper of the Seals.

The advantages of this last system, the Minister proceeds to argue, are considerable and numerous. Individual liberty is guaranteed by the safeguard of legal forms, the right of defence, the absolute impartiality and independence of the authority called upon to decide upon the question of Extradition. The intricate problems of competency, nationality, sufficiency of proof, and, not least, the real character of the offence and whether it be Municipal or Political; all the questions, in fact, on which depends the acceptance or rejection of the demand for Extradition, are submitted to the judgment of the persons most competent to decide upon them. And the Government is freed from all responsibility, from all possibility of external pressure, and from any dilemma as to maintenance of friendly relations with the State in whose name the demand is made.

These last considerations are by no means the least

important, though Signor Mancini, with due reticence, refrains from any allusion to this point, in demands such as may at any time be made, when Political, or at least Semi-Political, offences may reasonably be suspected to be in the back-ground. And even with all the guarantees for impartiality afforded by the Courts of the State from which Extradition is sought, the refusal of this demand, where the proofs were not made out to the satisfaction of the Court, have at quite a recent date* produced a temporary Diplomatic coolness between two great countries, which might very easily, under circumstances affording more room for National or Political animosity, glide into a rupture of peaceful intercourse, very difficult to heal. To avoid such possible complications, the best way appears to Signor Mancini to be the passing of a good National Law, regulating the practice of Extradition. And the effect of such a Law will be felt also, he observes, Internationally, since it will tend to diminish, and so by degrees to remove, the numerous antinomies which are to be found in the several Conventions, antinomies of which the Conventions concluded by his own country afford, in the Minister's view, very salient examples. These antinomies cover a wide area, including not only the enumeration and nomenclature of offences, but even such points as the Non-Extradition of the State's own natural-born or naturalized subjects, the proof to be required for Extradition, the cases of attempted crime, and complicity, and of Semi-Political offences (*delitti connessi ad un reato politico*), &c. These numerous divergences, though in part, as the Minister admits, unavoidable, are yet to be deplored, where they relate to the essence of the matter, upon which it seems to him difficult to hold that a

* The case alluded to (the Paris phase of the Hartmann Case) will probably be sufficiently obvious, especially as it has been incidentally mentioned in this Review, *Law Magazine and Review*, No. CCXL., May, 1881, Art. "Extradition and the Right of Asylum."

State can profess divergent principles and apply contradictory rules.

Under the system which he proposes to the consideration of the Commission, the Executive Power will, he believes, develop even greater freedom than heretofore, in the security which it will feel of being able to accept any advantageous stipulations not contrariant to the principles of the National Constitution. And this system, though as yet adopted by few States, is noticeable in Signor Mancini's eyes for being that of some of the nations which are foremost in Culture and in Liberty. He then refers the Commission to our own Extradition Act of 1870, to the Belgian Laws of 1833, 1856, and 1874, to the Dutch Laws of 1849 and 1874, and to the American Act of 1848.

The principle upon which these several Acts are based was adopted, Signor Mancini notes, by the Constituent Assembly of France in 1791, which passed a decree on the 19th February of that year to the effect that "the Constitutional Committee should without delay unite with the Diplomatic Committee for the proposition of a Law for the reciprocal Extradition of persons accused of certain crimes between France and the other nations of Europe." This unaccomplished Decree and this unfulfilled promise were taken up, His Excellency observes, by the late eminent Minister, M. Dufaure, when Keeper of the Seals, in 1878. His Bill, however, after producing lively discussions in the Senate, and having obtained ultimate approbation, fell through in the Chamber of Deputies for want of time—like so many other Bills, we may add, in the British House of Commons.

The story of the Dufaure Extradition Bill, it may be well to note, is written in the annals of the Society of Comparative Legislation, of which the distinguished author of the Bill was President. Perhaps we shall see its thread taken up once more under a new Ministerial dispensation.

In Italy there is, it would seem, little existing law

applicable to the questions before the Commission. Beyond Art. 11 of the Penal Code, which lays down that Extradition can only be granted in virtue of an order of the Government, and Art. 9, s. 2. of the law of the Council of State, which requires the opinion of that august body on demands for Extradition, and Art. 283 of the Code of Penal Procedure, which requires the opinion of the "*Sezioni di Accusa*"—if the demand is not made directly of the Government—there is nothing to be gathered from the Territorial Law. The Draft Penal Code had proposed to fill up this lacuna, in its Art. 9, approved by the Chamber of Deputies, but which was unable, through unavoidable impediments, to obtain the assent of the Senate.

Such being the existing state of things in Italy, the Minister for Foreign Affairs, with the full approbation of the Keeper of the Seals, thinks it best to lay the question before the Commission, with the brief *résumé* here given of the subject-matter of the proposed law.

Thus an important step has been taken in a direction which the Minister believes to tend to the ultimate assimilation of the several National laws of Extradition.

From every point of view, National or International, it is an important step, and its results both immediate and ultimate, both National and International, cannot but be viewed by us with deep interest. The pointed reference which the distinguished initiator of this movement makes to our own and other Constitutional countries of the Old and New World, adds to the interest which we must needs feel in it. Our next issue may, we hope, contain further particulars of the Italian solution of the complicated problem of Extradition.

C. H. E. CARMICHAEL.

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

APPLETON, John, Esq., Solicitor, aged 65. Admitted 1843.
Jan. 14.

ARCHER, William Robson, Esq., Solicitor, Lowestoft, aged 53.
Admitted 1862. *Oct. 22.*

BARTHOLOMEW, William, Esq., Solicitor, aged 75. Admitted
1830. *Jan. 13.*

BEAMISH, George, Esq., Solicitor (Ireland). Admitted 1835.
Mr. Beamish was fourth, but second surviving, son of the
late John Samuel Beamish, Esq., of Mount Beamish, M.D.,
descended of Beamish of Kilmalooda, Co. Cork, and brother
of Benjamin Swayne Beamish, Esq., of Mount Beamish,
J.P. *Dec. 31.*

BOURNE, Walter, Esq., Solicitor (Ireland), formerly Clerk of
the Crown for Co. Antrim, aged 87. *Nov. 19.*

BRADSHAW, John, Esq., Solicitor (Ireland), aged 71. Admitted
1821. *Nov. 22.*

BRETT, John Lowdham, of the Hive, Ryde, Isle of Wight,
and of the Hon. Society of Lincoln's Inn, Esq., Barrister-at-
Law, aged 77. Called 1830. B.A., Trinity College, Cambridge,
1828. *Nov. 30.*

BREWER, John, Esq., Solicitor, formerly of Truro, aged 59.
Admitted 1871. *Nov. 6.*

BROUGHTON, Legh DELVES, Esq., Solicitor, Birmingham.
Admitted 1862. The Broughtons of Broughton Hall, Stafford-
shire (created Baronets of England, 1660), succeeded, in the per-
son of Sir Brian, fourth Baronet, to the estates and representation
of the family of Delves, of Doddington, Cheshire, whose ancestor
was an Esquire of James, Lord Audley, at the Battle of
Poitiers. *Nov. 11.*

BRUMELL, John, of the Middle Temple, Esq., Barrister-at-
Law, Sheriff of Demerara, aged 66. Called to the Bar in
1875. Mr. Brumell had held various offices in British Guiana
since 1852. In 1855 he was appointed Stipendiary Magistrate;
Registrar-General in 1856; Sheriff and Police Magistrate,
Georgetown, in 1860. *Dec. 1.*

CANE, Matthew, Esq., Solicitor, Dublin. *Dec. 25.*

COLE, William Robert, of the Middle Temple, Esq., and of the North-Eastern Circuit, Barrister-at-Law, aged 72. Called 1838. *Dec.* 27.

CROSBY, Allan James, M.A., of the Inner Temple, Esq., Barrister-at-Law, aged 46. Mr. Crosby, who was son of the late James Crosby, Esq., of Streatham, was M.A. of Worcester College, Oxford (B.A. 1858, 4th cl. Law and Modern History). He was called to the Bar in 1865, and was for some years in the Public Record Office, and edited, under the direction of the Master of the Rolls, the Calendar of State Papers, Foreign Series, 1566-8. *Dec.* 5.

CURRIEHILL, John Marshall, Lord, of the Court of Session, LL.D., aged 54. Lord Curriehill, who was eldest son of the late John Marshall, also Lord Curriehill, was educated at the Edinburgh Academy, and subsequently at the Universities of Glasgow, from which he received the degree of LL.D., and Edinburgh, where he became a member of the University Court, and, by appointment of the Chancellor, Assessor of the Court. Lord Curriehill who was distinguished as a Feudal Lawyer and Conveyancer, was author of a Treatise on the "Titles to Land Consolidation Settlement Act, 1868." On the death of Lord Benholme, he was in 1875 raised to the Bench of the Court of Session, being at the time of his death the Lord Ordinary in Exchequer. He was D.L. for Edinburgh, and J.P. for Midlothian. *Nov.* 5.

CURTIS, Charles John, Esq., Solicitor, aged 54. Admitted 1852. *Dec.* 13.

DEAKIN, James Henry, M.A., of Werrington Park, Cornwall, and Moseley Park, Cheshire, J.P., and of the Middle Temple, Esq., Barrister-at-Law, aged 29. Mr. Deakin, who was of Wadham College, Oxford, was called to the Bar in 1875, and was Lord of the Manor of Werrington, Constable of Launceston Castle, and J.P. for Devon, Cornwall and Middlesex. In 1874 he was returned, in the room of his father, the late Colonel Deakin, as M.P. (Conservative) for Launceston, and sat till 1877, when he retired. *Nov.* 8.

EALLES, Charles, of Eastdon, Co. Devon, and of the Inner Temple, Esq., Barrister-at-Law, aged 54. Mr. Eales, who had been for some time past Principal Clerk of Committees, House of Commons, was son of Thomas Eales, Esq., of Eastdon, and was J.P. for Devon. *Oct.* 22.

EASTLEY, Yard, Esq., Solicitor, Paignton, Co. Devon, Steward

of the Manor of Paignton, and Solicitor to the Local Board, aged 55. Admitted 1848. *Nov.* 15.

EASTMENT, Francis Meade, of Lincoln's Inn, Esq., Barrister-at-Law, J.P., for Co. Somerset, aged 51. Eldest son of John W. Eastment, Esq., of Wincanton, Somerset. *Jan.* 20.

EXHAM, William Allen, M.A., of the King's Inns, Esq., Q.C. Mr. Exham, who was M.A. of Trinity College, Dublin (B.A., 1841), was called to the Irish Bar in 1842, and joined the Munster Circuit, on which he held for a considerable period the office of Crown Prosecutor. He became Q.C. (Ireland) in 1863, and before his appointment as one of the Police Magistrates of Dublin was the Legal Member of the Municipal Boundaries Commission (Ireland). *Nov.* 26.

FITZGERALD, David Martin, Esq., Solicitor, Dublin. Admitted 1872. *Dec.* 26.

FITZGERALD, Robert Allen, of Lincoln's Inn, Esq., Barrister-at-Law, aged 47. Called 1860, and for some time a member of the Northern Circuit. Mr. Fitzgerald was second son of the late Thomas Fitzgerald, Esq., of Shalstone, Bucks., representative of the Fitzgeralds of Celbridge, Co. Kildare. *Oct.* 28.

FORSTER, Thomas, Esq., Solicitor, Newcastle-on-Tyne, aged 58. Admitted 1860. Sheriff of the Borough of Newcastle, 1875. *Nov.* 29.

FRENCH, Hon. George, Chief Justice of H.B.M. Supreme Consular Court for China and Japan. Called by the Hon. Society of Lincoln's Inn, 1844. Mr. French held office as Judge of the Mixed Courts, Sierra Leone, 1871; Judge of the Supreme Court for China, 1877, and for China and Japan, 1878. *Nov.* 13.

GAY, William, Esq., Solicitor, Wisbeach, aged 62. Admitted 1840. Second son of the late John Johnson Gay, Esq., of Alborough Hall, Norfolk. *Dec.* 28.

GEARE, William Frederick, Esq., Solicitor, aged 32. Admitted 1871. *Jan.* 12.

GILL, William, of the Inner Temple, Esq., Barrister-at-Law, and an Advocate of the High Court, Bombay, aged 57. Called 1851. *Nov.* 4.

GORHAM, William, Esq., Solicitor, Tunbridge, aged 65. Admitted 1837. *Dec.* 17.

HALLARD, Frederick, Esq., M.A., Advocate at the Scottish Bar, Sheriff Substitute of Mid-Lothian, aged 61. Mr. Hallard, who was M.A. of the University of Edinburgh, was called by

the Faculty of Advocates in 1844, and was for several years a Reporter for the *Scottish Jurist*, and was a contributor to, and at one time Editor of, our Edinburgh Contemporary, the *Scottish Law Magazine*. In 1855 he was appointed by Sheriff Gordon one of the Sheriffs-Substitute for Mid-Lothian, a post involving heavy work in the Edinburgh Police Court, as well as in the Sheriff Court. His discharge of both these offices was marked, says the *Scotsman*, by "independence of spirit and judicial integrity of purpose. Whatever he conceived to be right he did, fearless of public opinion." Sheriff Hallard, whose manner retained much of French vivacity, was the son of an *émigré* of 1793—a native of Normandy—who had served in the Royal Army, and who settled in Edinburgh as a teacher of his own language. At the University of Edinburgh, the future Sheriff was a hearer of Sir William Hamilton, having returned to this country to complete his education, commenced at the Lycée Charlemagne, in Paris. *Jan. 12.*

HARRISON, William Hopkins, M.A., and of the Inner Temple, Esq., Barrister-at-Law, aged 73. Called 1835. M.A. Gonville and Caius Coll., Cambridge (B.A. 1832; Wrangler, and 2nd Cl. Class. Tripos). *Nov. 9.*

HEWITT, Samuel F., of Bloomsbury, Barbadoes, and of the Middle Temple, Esq., Barrister-at-Law, aged 49. Called 1862. *Nov. 4.*

HOLMES, Richard, Esq., Solicitor, Barnard Castle, aged 31. Admitted 1873. *Nov. 29.*

HOLMESTED, Arthur, Esq., formerly Attorney-at-Law (Eng.) and late Clerk of Records and Writs of the Court of Chancery, Toronto, Canada, aged 73. Mr. Holmested, we learn from the *Canada Law Journal*, after practising as an Attorney in London for some years, in 1857 emigrated to Canada. In 1868, on the separation of the Records and Writs Department from the other duties of the office of Registrar of Chancery, Mr. Holmested was appointed the first Clerk of Records, and held office till 1880, when he resigned through ill health. *Nov. 27.*

HOME, Francis, Esq., late of Cowdenknows, Advocate at the Scottish Bar, for forty-three years Sheriff Substitute of Linlithgowshire, aged 87. The later Cowdenknows line descended from the Homes of Blackadder through Sir David Home of Crossrig, an eminent Senator of the College of Justice by the title of Lord Crossrig, 1689-90. *Jan. 20.*

HUNT, Henry Thorowgood, Esq., of the Middle Temple, and

of the Oxford Circuit, Barrister-at-Law, aged 43. Called 1868. *Nov. 30.*

IVESON, Arthur, Esq., Solicitor, Town Clerk of Hedon, Yorkshire, aged 74. Admitted 1832. Mr. Iveson, who was son of William Iveson, Esq., Solicitor, also of Hedon, was for many years Coroner for the Seignior of Holderness, and Registrar of the County Court, Hedon. *Oct. 30.*

JAMIESON, Frank, Esq., member of the Society of Advocates in Aberdeen. Admitted 1872. *Jan. 2.*

JENCKEN, Henry Diedrich, of Lincoln's Inn, Esq., Barrister-at-Law, aged 56. Mr. Jencken, who was called to the Bar in 1861, was joint author with Dr. Tomkins, of Lincoln's Inn, of a work on *Modern Roman Law*, and subsequently of the *Law of Bills of Exchange, &c.* He had, from its foundation in 1873, been closely connected with the Association for the Reform and Codification of the Law of Nations, of which, on the death of Dr. Miles, of Boston, U.S.A., he was appointed the General Secretary, an office which he held at the time of his death. *Nov. 25.*

KNOWLES, Richard Brinsley, of the Middle Temple, Esq., Barrister-at-Law, aged 62. *Jan. 29.*

LUSH, Rt. Hon. Sir Robert, one of the Lords Justices of Appeal, aged 74. Son of Robert Lush, Esq., of Shaftesbury, Wiltshire. The late Lord Justice, who commenced his legal studies in a solicitor's office, was called to the Bar by the Hon. Society of Gray's Inn in 1840. He took silk in 1857, and was raised to the Bench and Knighted in 1865. In 1879 he was sworn of Her Majesty's Most Honourable Privy Council, and was raised to the Court of Appeal in succession to Lord Justice Thesiger in 1880. "Sir Robert Lush," says *The Spectator*, "preserved the best traditions of the English Bench. He was a strong judge, without the least tincture of arrogance or self-assertion; a quick judge, yet in the highest degree cautious and painstaking; and a universally popular judge, who never deviated a hair's breadth from the line of strict impartiality." *Dec. 27.*

MACQUEEN, John Fraser, of Airds, and of Lincoln's Inn, Esq., Q.C., and a Bencher, aged 78. Mr. MacQueen, who was called to the Bar in 1838, took silk in 1861, and in the same year was elected a Master of the Bench of his Inn. He was well known as the author of Treatises on the "House of Lords," on "Husband and Wife," &c., and also as one of the Official Reporters in the House of Lords, having edited the series known as "MacQueen's Reports" from 1851 to 1865. Mr.

MacQueen, who was the eighth but eldest surviving son of the late Donald MacQueen, Esq., of Corrybrough, Inverness-shire, eventually succeeded his father in the chiefship of the Clan Revan, the tribal designation adopted by the MacQueens from their ancestor Roderick Dhu Revan MacSween, first of Corrybrough. He was D.L. and J.P. for Inverness-shire. *Dec. 6.*

MALINS, Right Hon. Sir Richard, Kt., P.C., a Master of the Bench of Lincoln's Inn, late a Vice-Chancellor, aged 76. Sir Richard, who was third son of William Malins, Esq., of Ailston, Co. Warwick, was of Gonville and Caius Coll., Camb. (B.A., Jun. Op., 1827). Called to the Bar by the Hon. Society of the Inner Temple in 1830, he became Q.C. in 1849, and in the same year was admitted *ad eundem* and elected Bencher of Lincoln's Inn. Raised to the Bench in 1866, he was knighted in 1867. On resigning the Judicial office in 1881, Sir Richard was sworn a member of the Privy Council. He had sat in Parliament as M.P. (Conservative) for Wallingford, 1852-65. Vice-Chancellor Malins's judgments, it has been said, remarks the *Law Times*, were "as a rule, such as would be given by an arbitrator. . . His appointment to the Bench was welcomed not only by the Bar but also by the public, who had had full opportunities of judging of his legal ability and great rectitude." *Jan. 15.*

MARSHALL, James, of Duncrieve, B.A., Cantab., Advocate at the Scottish Bar, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 30. Eldest son of the late Walter Marshall, Esq., of Duncrieve. Mr. Marshall, who was educated at the Edinburgh Academy, and Uppingham School, was a member of Trin. Coll., Cam. (B.A., 1873); and was called to the Scottish Bar by the Faculty of Advocates in 1875. In 1877 he was called to the English Bar by the Hon. Society of Lincoln's Inn. He was J.P. and Commissioner of Supply for Kinross-shire, and in 1879 was appointed Honorary Sheriff-Substitute for that County. *Sept. 24.*

MELVILLE, Hon. Alexander Leslie, M.A., of Branston Hall, Lincolnshire, Advocate at the Scottish Bar, aged 81. Mr. Leslie Melville, who was fifth and last surviving son of Alexander, ninth Earl of Leven, and fifth Earl of Melville, was M.A. (1831), of Trin. Coll., Cam., and was called by the Faculty of Advocates in 1824. He was D.L. and J.P. for Lincolnshire. Sir Robert Melville, Ambassador to England, t. Mary Queen of Scots, a second son of Melville of Raith, heir male of

Galfridus de Maleville, first Justiciar of Scotland, was created Lord Melville, 1616. The fourth lord was created Earl of Melville, 1690, and the second Earl of Melville succeeded as sixth Earl of Leven (created 1641), as heir of Catherine Leslie, wife of the first Earl of Melville. *Nov. 19.*

O'BRIEN, Hon. Mr. Justice James, M.A., Second Justice of the Queen's Bench Division (Ireland), and a Bencher of the King's Inns since 1849, aged 75. The late Justice was fourth son of James O'Brien, Esq., of Limerick, of the Clare branch of the O'Briens, and brother of John O'Brien, Esq., M.P. for that city in 1841-52. He was educated at the Belfast Institute, proceeding thence to Trinity College, Dublin, where he graduated with the highest distinction. (B.A., 1826, gold medallist for mathematics, previously 1st prizeman for logic, 1825; M.A., 1832.) He read with Mr. Butler, an eminent conveyancer, in London, and was called to the Irish Bar in 1830. Becoming Q.C. in 1841, he was, in 1848, made Her Majesty's Third Serjeant for Ireland, becoming Second Serjeant in 1851. He sat as M.P. (Liberal) for Limerick, 1854-8, in which last year he was raised to the Bench as a Puisne Judge of the Queen's Bench. Our contemporary the *Irish Law Times* testifies warmly to the high respect in which Mr. Justice O'Brien was held, in the following terms: "As a Judge ever unbiassed and impartial in the extreme, he never swerved from constitutional principle, and was especially distinguished not only for the soundness of his decisions, but for the painstaking thoroughness of his judgment. He won the highest estimation of his colleagues, and of both branches of the legal profession, and it is with no ordinary feelings that his death is universally deplored." *Dec. 29.*

ORPIN, Basil, Esq., of Marston Hall, Lismore, Co. Waterford, and of Dublin, Solicitor, aged 81. Youngest son of Rev. Basil Orpin, Rector of Ballivourney, Co. Cork. Mr. Orpin was an M.A. of Trinity College, Dublin. *Jan. 4.*

POPE, John Billing, B.A., Oxon., of Lincoln's Inn, Esq., Barrister-at-Law. Called 1872. *Dec. 8.*

RICHARDSON, Sir John Stuart, of Pencaitland and Pitfour, Bart., Advocate at the Scottish Bar, aged 84. Sir John, who was educated at the University of Edinburgh, was called to the Bar by the Faculty of Advocates in 1820. He was eldest son of the late James Richardson, Esq., of Pitfour, and in 1837 was served heir to his kinsman, Sir John, twelfth Baronet, in the

Scottish Baronetcy of Richardson of Pencaitland, created 1630. The late Sir John Richardson was D.L. and J.P. for Perthshire, and Major-General of the Royal Company of Archers, and from 1843 to 1875 was Secretary to the Order of the Thistle. *Dec. 1.*

RIDSDALE, Francis James, Esq., Solicitor, aged 85. Admitted 1819. *Oct. 31.*

ROBINSON, John Frederick, Esq., Solicitor, formerly of Hadleigh, Suffolk, aged 62. Admitted 1841. *Dec. 9.*

RYDER, Hon. Albert Dudley, M.A., of the Middle Temple, Barrister-at-Law, aged 38. Mr. Ryder, who was the youngest son of Dudley, Earl of Harrowby, K.G., was educated at Harrow, and subsequently went up to Trin. Coll., Camb. (B.A. Honours in Classics and Law Tripos, 1866). He was called to the Bar in 1868, and joined the Oxford Circuit. *Dec. 12.*

SHERRATT, Frank Warren, Esq., Solicitor, aged 22. Admitted 1881. *Nov. 3.*

SINNOTT, James, Esq., Solicitor (Irel.) Admitted 1836. *Nov. 20.*

SMITH, James Hicks, of The Dawscroft, Brewood, Staffordshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 59. Called 1852. Author of "The Parish in History and in Church and State," and other works. *Dec. 28.*

SMITH, Patrick Rose, of the Middle Temple, Esq., Barrister-at-Law, Sheriff of Hong Kong, and Deputy Registrar of the Supreme Court there, aged 33. Called 1879. *Nov. 26.*

SOUTHEE, Vernon, Esq., Solicitor, formerly of St. Ives, Huntingdonshire, aged 42. Admitted 1861. *Nov. 19.*

TATLOW, John, Esq., Solicitor (Irel.), aged 64. Admitted 1846. *Nov. 2.*

TYNDALL, Charles Mahon, M.A., of Leyton, Essex, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 56. Mr. Tyndall, who was educated at Winchester, was M.A. of Ch. Ch., Oxon. (B.A., 1847), and was called to the Bar in 1854. He was the only son of the late Charles Tyndall, Esq., of the Fort, Bristol, and nephew of Onesiphorus Tyndall-Bruce, Esq., of Falkland, Fifeshire. *Nov. 20.*

TYRRELL, Edwin, Esq., Solicitor, aged 38. Admitted 1866. *Nov. 8.*

WALKER, Richard Alexander, Esq., formerly Solicitor, Dublin, aged 78. *Dec. 15.*

WATTERS, Roger, of the Middle Temple, Esq., Barrister-at-Law. Called 1841. *Dec. 20.*

WATSON, Horace, of Lincoln's Inn, Esq., Barrister-at-Law, aged 54. Mr. Watson, who at the time of his death held the office of Solicitor to the Post Office, and had previously been Solicitor to the Woods and Forests, was called to the Bar in 1864. *Dec. 24.*

WATSON, John, Esq., Solicitor, Registrar of the Court of Chancery, Durham, aged 67. Admitted 1855. *Dec. 22.*

WEBB, Matthew, Esq., Solicitor, aged 59. *Dec. 31.*

WEEDON, George, Esq., Solicitor, Uxbridge, aged 51. Admitted 1865. *Dec. 13.*

WILDE, William, of Gray's Inn, Esq., Senior Benchet of that Hon. Society, aged 82. Mr. Wilde, who was called to the Bar in 1822, and became a member of the Northern Circuit, was formerly Chief Justice of St. Helena. In 1854 he was elected a Master of the Bench of his Inn, and served the office of Treasurer in 1864. *Nov. 10.*

WILTON, Henry Hooper, Esq., of Witminster House, Stonehouse, Gloucestershire, J.P., formerly a Solicitor in Gloucester, aged 86. Mr. Wilton, who had been Town Clerk and Clerk of the Peace for Gloucester, had long since retired from his profession. *Oct. 30.*

WOODCOCK, Thomas, of the Inner Temple, Esq., Barrister-at-Law. Mr. Woodcock, who was Queen's Advocate, Gold Coast Settlements, was called to the Bar in 1860. *Nov.*

WRIGHT, Edward, LL.D., of Flora View, Donnybrook, Co. Dublin, and of the King's Inns, Esq., Barrister-at-Law, aged 71. Educated at the Belfast Academy; B.A. Trin. Coll., Dublin, 1842; LL.D. of the same University, 1845. Called to the Irish Bar in 1833, Mr. Wright joined the North-Eastern Circuit. *Nov. 1.*

Quarterly Notes.

Sir Travers Twiss has reprinted with additions two papers read by him at the Cologne Conference of the Association for the Reform and Codification of the Law of Nations (33, Chancery Lane) which deal with some interesting phases of mediæval story. One is on the early Charters granted by the Kings of England to the merchants of Cologne, and the other on an ancient Charter granted by the Burgrave of Drachenfels to the Chapter of Cologne. The former of these raises some questions which are scarcely yet completely set at rest. The Charters are in Lappenberg, but Lappenberg clearly found great difficulty both in reading them and in assigning the true dates of the undated charters. It is still matter for varying opinions whether the charter in favour of the "*Homines et cives Colonienses*," tested at Northampton by Richard de Luci, and William Fitz Alden (or Fitz Aldelm), was granted at the first or second Council of Northampton. Lappenberg was inclined to the earlier date: Sir Travers argues, with much force we think, in favour of the later. For the year 1164 is, as he justly observes, "an epoch of great significance in the history of England." Two Royal marriages were the subject of negotiation, the effect of which would be to bring about a double affinity between the Angevin Kings of England, and the Emperor Frederick I., the "*Mirror of Justice*." The intermediary for these negotiations was Reginald, Archbishop of Cologne, an Imperialist Prelate in the great quarrel between Pope and Emperor. Good reason this for favours to the men of Cologne. Though not successful in both cases, the marriage which Archbishop Reginald did arrange produced a more far-reaching effect than could have entered into

his mind at the time. At the second Council of Northampton, Reginald, if he was present, must have seen his very militant brother of Canterbury, who came, as Sir Travers observes, under a kind of protest, carrying in his own hand his Archiepiscopal Cross. The significance of this act would not be lost upon any who witnessed it, least of all upon Reginald, himself an Archbishop, but one on the best of terms with Kings and Princes. The balance of evidence on the whole seems strongly in favour of 1164 as the true date of Charter II. The other undated Privilege to the men of Cologne, dated at Woodstock, but, like the second, without any mention of the regnal year, Sir Travers assigns to the Great Council held by Henry II., at Woodstock, 1—8 July, 1175, several of the witnesses to the Charter being recorded as having been present on that occasion. It might, however, have passed at a slightly earlier date. The late Rev. R. W. Eyton, in his valuable *Itinerary of Henry II.* (London, 1878), shows from the charges of the Sheriffs of London that Henry was at Woodstock during June, and assigns to that month a Charter in favour of Cerne Abbey, attested by Richard, Bishop of Winchester, one of the witnesses of the Cologne Charter. In the latter part of June the King must have gone to Oxford, where he had summoned a Court to meet on the 24th, on which day a Charter in favour of the Canons of Malton is dated, followed by another on the 29th, attested only by Geoffroy, Bishop of Ely, defining the forest rights of the Shropshire Priory of Bromfield. After the 29th, the King was at Gloucester, holding a Council on the affairs of Wales, but by the first week in July Mr. Eyton shows King Henry, and Henry, the "young King," to have been once more at Woodstock, and assigns to the period of the Woodstock Council several charters attested by Richard, Bishop of Winchester, William Fitz Aldelm "Dapifer," and others of those who attest the Cologne "Privilegia."

The Louvain Quit-claim (Charter III.) to the citizens of Cologne is specially interesting as a memorial of Richard "of the Lion Heart," on his return from captivity, as well as from its relation to the general history of the times. One of the witnesses, William de Stagno, was Richard's companion as far as Vienna, on his ill-fated return journey from Palestine. Sir Travers Twiss has been able to show that the rejection of this Charter by Professor Stubbs on the ground of the impossibility of the date as read by Lappenberg, has for its basis Lappenberg's own misreading of the date, which is shown by the text on record in our Public Archives to be February 16th, a perfectly possible date, and not February 6th, which, as Professor Stubbs said, would have been impossible, Richard having only been delivered over to the Queen Mother Eleanor, at Mentz, on the 4th February.

The magniloquence of mediæval writing, even on matters where the subtle interpretations of a civilian or a feudal lawyer might easily wrest a meaning which the writer was far from intending, is strikingly exemplified in a letter from Henry II. to the Emperor Frederick Barbarossa, printed by Sir Travers from the continuator of Otto of Freysingen's Chronicle. Henry, in so many words, places his entire kingdom at the feet of the Emperor, and subjects it to his authority (*vestræ committimus potestati, ut ad vestrum nutum omnia disponantur*). We need hardly remark upon the juridical significance of the term *potestas* in Roman Law, or on the force of the phrase "*Regnum nostrum . . . vestræ committimus potestati*." In the long disputes which lasted through generations of English mediæval history as to the nature of the Feudal relations between the Crowns of England and Scotland, such a letter as this of Henry to Frederick would, we cannot but think, have been a perfect Godsend to the English side of the controversy. Yet we have never heard so

much as a whisper of the feudal subjection of the Kingdom of England to the Holy Roman Empire. Indeed those historians who insist most strongly on what they consider to have been the Feudal subjection of the Scottish King to the assumed "over-lord" of his kingdom, the King of England, are also the most strenuous in their assertion of the view that the English Kingdom lay outside the Empire, and was, in fact, if not in law, itself the "Empire of Britain." If they liked, they might clearly adduce Henry's letter in proof of his subjection of that Empire to the Sacred Empire of "*Roma caput Mundi*."

Recent numbers of the *Rivista Penale* (Florence: Succ. Lemonnier) and of the *Rivista di Discipline Carcerarie* (Rome: Ministry of the Interior), contain much matter of high importance to all who are interested in the administration of Criminal Law and in Prison Reform. Articles have been published in both the above Reviews, *Rivista Penale* for May, and August, 1881, *Riv. di Disc. Carc.*, No. 5-6 for 1881, giving accounts from different pens of a remarkable series of unofficial visitations of Convict Prisons and Penal Colonies, undertaken by the "Circolo Giuridico," formed about two years ago at the University of Siena through the energy of Professor Lucchini, and carried out under his personal direction. The visits were of a thoroughly working character, the band of students was, as it appears, most warmly welcomed by the authorities of the several Institutions visited, and the entire scheme had the hearty approbation of the able and enlightened Director-General of Prisons for Italy, Commendatore Beltrani-Scalia. We can conceive few methods better adapted to testing both the weak and the strong points of prison administration than such unofficial visits, paid for the express purpose of thorough investigation, and carried out

systematically, under the leadership of experienced persons, themselves filling positions of responsibility. The reports published in the two Reviews cannot but prove useful alike to the officials engaged in Prison administration, and to the general public, whose interest it is that the administration should adopt the best methods, and be served by the best men. The Agricultural Colony on the Island of Pianosa appears to have attracted the warmest expressions of admiration, for the combination of firmness with gentleness in the rule exercised over the "Family," as its Director calls the Colonists. And there can be no doubt that the open-air work carried on there is both healthy and full of practical utility. There is other work which has to be done in Italy, which is open to the objection, at first sight, of being the reverse of healthy. It is well known that for a considerable time past, the reclamation of the Campagna has been one of the questions of the day, in and out of the Parliament on Monte Citorio. It is a vast undertaking; it is one to which a certain number of lives may have to be sacrificed; but it is an undertaking which must be carried through, for the sake of the Capital itself.

The advantage of the employment of Convict labour on the Agro Romano is no longer a question of theory. It is a demonstrated fact. Its promoters, of course, look forward to the ultimate substitution of free labour, but the commencement of the work can best be made by means of the disciplined organisation at the disposal of the Ministry of the Interior.

The Agricultural Colony at the *Tre Fontane*, outside the walls of Rome is an accomplished fact, and so successful a fact that the chief engineer, Signor Bucci, the author of a valuable Report printed in the double number 8-9 of the *Rivista di Discipline Carcerarie* for 1881, concludes his account with an earnest plea for the establishment of thirty

or forty such Colonies in the neighbourhood of Rome. The value of Signor Bucci's paper is increased not only by his practical acquaintance with the details, but also by a second paper, by Signor Mars, printed along with it, and containing an elaborate scheme of temporary Barracks for Convict Colonies, with dormitories on the cubicle system, which is already in operation, under one of the proposed forms, at the *Tre Fontane*. The two papers are accompanied by a series of beautifully engraved plans, with working sections and elevations, forming altogether a most interesting and compact body of information on a branch of Prison Administration for the development of which Italy possesses special advantages. It seems obvious to us that the question of health is settled by facts. Under the discipline of a branch of the Public service, the hygienic conditions necessary to work in the Campagna are secured as they could not be in the first instance, with free labour. After the convict has broken ground, the free man may take his place. Meanwhile, we congratulate the Director-General of Prisons on the good work he is doing for Italy, as well as for the general question of Prison Administration and Prison Reform.

In these days of its increasing extension of influence in South-Eastern Europe, the Austro-Hungarian Monarchy becomes a constantly growing subject of interest to Western Europe. It is a matter of no slight importance that the legal literature of the Dual Monarchy should be not only good in itself, but also in sympathy with Western Juridical Thought. These conditions we wish to note as the guiding features of the *Juristische Blätter* (Vienna: I. Weihburg-gasse, 9), edited by Dr. Max Burian and Dr. Lothar Johanny. The range of subjects treated is wide, embracing alike scientific jurisprudence and case-

law, Theory and Practice. The general news of the week, considered of course, mainly from the standpoint of the Legal Profession for whose use it is intended, forms a part of every issue. The correspondents of the journal in Prague, and other cities of the Monarchy, contribute the news of their respective neighbourhoods. The meetings of Congresses, when of interest to legal readers, are rapidly noted. Thus we remark that the Cologne Conference of the Association for Reform and Codification of the Law of Nations was reported *durante Congressu*. The losses which the hand of time impresses upon the legal profession in Austria-Hungary are recorded in Obituary Notices, and in fact nothing seems neglected which can be of advantage to the readers of the Journal. For Penal Law, which forms a regular part of the staple matter, one of the learned editors, Dr. Johanny, is in a special sense an authority, having been a member of the Imperial-Royal Commission for the revision of the Austrian Penal Code. Our Vienna contemporary is now in the eleventh year of its literary life. We congratulate its Editors upon its successful Past, and wish it a prosperous Future.

Reviews of New Books.

Henrici de Bracton De Legibus et Consuetudinibus Angliæ Libri Quinque. Edited under the direction of the Master of the Rolls, by Sir TRAVERS TWISS, D.C.L., Q.C. Vol. IV. Longman and Co. 1881.

The present instalment of Bracton, soon it is believed, to be followed by the fifth volume, opens up to us some interesting by-paths of Feudal and Canon Law, of which we may perhaps avail ourselves more fully at a future date. For it is impossible, in the space at present at our command, that we should do more than indicate a few salient points. There is much curious incidental discussion of mediæval science involved in the question raised by some of Bracton's language concerning the divisions of time and the mode of measuring them prevalent in his day. It is certainly to all seeming improbable, as Sir Travers Twiss urges, that such a vast undertaking as the celebrated Strasburg clock, which most of us remember well in days when as yet the glass and spire of the Cathedral were untouched by cannon shot, should have been among the first of its kind. The conception and its working out are alike too elaborate to lend colour to such a supposition. But we have not at present sufficient materials for any certain judgment, though the testimony of Accursius leads to a presumption that further information should be sought in Italy or Sicily, as we might also infer from the present of a clock, moved by weights and wheels, made by Kamel, the Soldan of Egypt, to the Emperor Frederick II. We may remark, however, that Mr. Kington-Oliphant of Gask, in his *Life of Frederick II., Emperor of the Romans* (Macmillan 1862), vol. I. p. 873, calls the present of Soldan Kamel a "tent of wonderful workmanship, displaying the movements of the sun and moon, and telling the hours of the day and night." It is worth remembering that the friendship of Frederick for Malek Kamel was one of the numerous *gravamina* which the Western World brought against him. Whatever the world in East or West might think of him, Frederick went on through life, cultivating the *Ars Mathematica* with passion, as M. Huillard Bréholles records in his *Historia Diplomatica Friderici Secundi* (Paris, 1857). His enemies said he pursued this branch of

science, "*credens fortassis suam cum superis per artis experientiam mathematica coequare naturam*" (Malaspina, ap. Muratori, VIII., 788). The opposite view is that enshrined in the words of M. Huillard Bréholles himself (*Op. cit.*, *Introduction*, p. DXLIV.); "It is no small honour for a thirteenth century monarch to have made his appeal to the men of science and letters without giving a thought to differences of religion and race, to have favoured all manifestations of human reason, and to have once more thrown open to it the broad way from which it was never more to depart." It was, however, just because he held sway during the thirteenth century, we should say, that these things were possible for Frederick "the Wonder of the World."

With regard to the difficulties as to the identity of certain Justiciars referred to by Sir Travers Twiss, we are far from supposing that they can be entirely cleared up without a good deal more time and research on the part of the delvers into mediæval records. But Engelard de Cygoniis, with another of his name, is mentioned in Magna Charta among those foreigners who were to be removed from the office of "ballivus," so that "they should not any more hold that office in England;" and a Robert de Roppelay is among the "fideles," by whose counsel the king states that he granted the Charter (See Taswell-Langmead's *English Constitutional History*, 2nd Edition. Stevens and Haynes, pp. 110-122). As to the preference to be given among the varying forms in the case of Simon de Roppelay, or Rokesle, there is a good deal to be said on both sides. Notwithstanding, however, the support apparently rendered by Magna Charta, we rather incline to Rokesley, or Rokesle, of which name abundant traces are to be found, in Rolls of Arms, from Henry III. to Edward II., as well as in Rymer, and in the archives of the City of London. Mr. Boutell, in his *Heraldry*, p. 197, gives, "Ermi. masculée gu," as the coat of Richard de Rokele, from a Roll of Henry III. Curiously enough the very first number of the *Antiquarian Magazine and Bibliographer* (W. Reeves), for January, 1882, contains a different coat, "Arg. a fesse gu., six lions ramp. arg.," as borne by Sir Ric. Rokesley, t. Edw. II., from a Roll in the British Museum (Lansd. 276), known as Philipot's Roll.

Richard de Rokesle, of Kent, was summoned to the Coronation of the King and Queen, *Claus. 1 E. 2 m. 10 d.* (Rymer, *Fœdera*, T. I. P. IV. 111.) Sir Gregory de Rokesle was Mayor, Chamberlain, and Coroner of the City of London, 4 Edw. I.;

Adam de Rokesle was Alderman, 35 Edw. I., Robert de Rokesle, 19 Edw. I., and Walter de Rokesle, 5. Edw. II.; John de la Rokesle was Sheriff, 16 Edw. III.: others of the name were perhaps not quite so worshipful; thus we have a John de Rokeslee, 4 Edw. II., "held suspected of evil, and of beating men coming into the City, against the peace of our lord the King . . . and for that he is well clothed, and yet has no business by which to support himself." (Riley, *Memorials of London and London Life, XIIIth, XIVth, and XVth Centuries*; London: 1868.) This last Rokesle was committed to prison as a "night walker."

Of the name of Ropesley, on the other hand, we have as yet found but scanty individual traces. One, however, nearly contemporary, may be cited from the *Topographer and Genealogist*, Vol. I., s. v., "The Ancient Earldoms of England," in the county of Lincoln, and is connected with the house of Gant in its claims on the Earldom of Lincoln.

The words *Advocatio* and *Advocatus*, whose history and varying meanings are touched upon by Sir Travers Twiss, have a curious, and, as it seems to us somewhat involved history. Bracton and Fleta affords a *locus classicus* for their ordinary use. The words seem throughout the Middle Ages to have contained within them a twofold sense, of which sometimes the one and sometimes the other was uppermost. These two senses are Patronage and Defence. Perhaps they are, strictly speaking, but two shades of the meaning involved in the idea which the words represented. The right of nomination to a Church clearly implied a warranty of quiet possession, *i.e.*, a defence against the disturbance of such possession. And this defence or protection was sought by monasteries as well as parochial churches, and by towns as well as by churches and monasteries. Thus Ducange speaks of "*Advocati Urbium ac Regionum*" as well as of "*Advocati Monasteriorum*." As regards towns, these *Advocati* were practically the old "*Defensores Civitatum*." As regards Churches, the protective character of the tie and its identity with that of the *Defensor* may be readily seen in such facts as that the Dukes of Zähringen were Advocates of the Church of Zurich, the Counts of Louvain of the Church of Nivelles; last, not least, we may see it in the fact that throughout the long and chequered story of the mediæval Roman Empire, from Charles the Great, through Frederick II., even down to Joseph II., at the close of the eighteenth century, the Emperor was styled

"*Sancta Ecclesia Defensor seu Advocatus.*" He was also "Protector of Palestine, of General Councils, and of the Catholic Faith." So our own Queen is "Defender of the Faith:" there is precedent for *Advocata* in Mediæval History, as well as in Latin Theology. The protection connoted by the words we have been considering seems to meet us on the threshold, for the very first meanings assigned by Ducange to *Advocare* are "*in familiam admittere, . . . ut suum agnoscere.*"

On this point, as on others raised by Sir Travers Twiss, there is probably a good deal yet to be worked out. Sir Travers himself would, no doubt, be amongst the first to admit this, and we are sure that the more discussion is set on foot, the better will he be pleased with the result of his labour of love spent on Bracton *De Legibus Angliæ*.

A Treatise on the Law of Bankruptcy. Fourth Edition. By GEORGE YOUNG ROBSON, of the Inner Temple, Esq., Barrister-at-Law. Butterworths. 1881.

A Concise Treatise upon the Law of Bankruptcy. By EDWARD T. BALDWIN, M.A., of the Inner Temple, Barrister-at-Law. Second Edition. Stevens & Haynes. 1881.

It is to be hoped, for the sake of the Commercial Community, that the approaching Session of Parliament may witness the passing of the long looked-for new Bankruptcy Act, but the possibility of this must greatly depend upon the amount of opposition and obstruction which the expected proposals for the necessary changes in the procedure of the House of Commons may be destined to encounter. We trust that both Conservatives and Liberals will unite their forces to accomplish a task which really lies outside the lines of party politics, and thus enable the Legislature to perform its normal functions as a law maker. In the midst of the uncertainty which still envelopes the future of Bankruptcy and other domestic legislation, we think Mr. Robson and Mr. Baldwin have each done well to refrain from postponing the appearance of new editions of their respective works. The more so, inasmuch as whatever alterations may be effected by the coming Bill in the mode of administering the law, it is improbable that any changes of moment will be made in the principles of the law itself.

Mr. Robson's treatise is so well known as an authority on Bankruptcy Law, that it is unnecessary to do more than note the

features which differentiate the fourth edition from its predecessors. In consequence of the important changes in the law as to Bills of Sale effected by the consolidating and amending Act of 1868, the author has found it desirable to re-write the whole of the chapter devoted to that subject. The existing law is now concisely and clearly set out, due reference being made to the various points which have been judicially decided since the passing of the Act. Mr. Robson has also added a short chapter on the Proof of Debts under sec. 10 of the Judicature Act, 1875, in Administration Actions and Winding-up of Companies. By this section, as is well known, the Rules in Bankruptcy as to proof by secured and other creditors were applied to the winding-up of insolvent Companies and to the administration by the Court of the estates of deceased insolvent debtors. The difficulties of construction to which its somewhat obscure wording has given rise are carefully considered, and its correct interpretation, in accordance with the decided cases upon it, clearly laid down.

The text throughout has also been thoroughly revised, and the important decisions on Bankruptcy law which have accumulated since the issue of the last edition in 1876, are duly worked in in their appropriate places.

To those who are content with a less exhaustive treatment of the subject than that which Mr. Robson's work affords, we can recommend Mr. Baldwin's "Concise Treatise." That its merits, which we noted on its first issue two years ago, have been recognised in the Profession, is shown by the speedy demand for a second edition. The author has made a painstaking and thorough revision of his book, which has been partly re-written, and now exceeds its former bulk by about a hundred and fifty pages. All decided cases of importance are duly referred to, and the work generally gives good promise of maintaining its reputation as a handy book of reference for the practitioner. We note that occasionally the necessity for conciseness has led Mr. Baldwin to make his enunciations of the law too sweeping in character: *e.g.*, on p. 96, the statement that the pay or pension of present or past naval or military officers or civil servants does not, on bankruptcy, pass to the trustee; should have been qualified by the exception of a pension granted to a Government officer exclusively for *past* services, which will so pass. This is correctly stated by Mr. Robson (p. 452) and supported by a catena of cases.

A Treatise on the Law of Bills of Lading, with an Appendix of Forms, &c. By EUGENE LEGGETT, Solicitor and Notary Public. (Calcutta : Thacker, Spink & Co. Bombay : Thacker & Co. Limited. London : Stevens & Sons. 1880.)

This is a practical work on an important subject of Maritime Law, and from the author's personal acquaintance with the law of our Indian Empire, will be found specially useful to masters of vessels trading in the Eastern seas. The Forms given in the Appendix comprise, however, a more than merely Indian utility, as they embrace within their purview the requirements of the practice in the United States, West Indies, African, and other trades. The author's propositions are supported by reference to cases arising in the Courts of the several countries concerned, and thus wherever the master may be he will find any statement of a doctrine or practice made by Mr. Leggett supported by the local law. In some cases Mr. Leggett's marginal analysis of his text is a little at variance with that text. Thus, on page 13, the marginal note says, "Master is bound to sign bills of lading," while the relative text states that there is "no compulsion by statute on shipmasters to sign bills of lading, but, by the custom of the trade, a master should sign bills of lading as they are the only evidence of shipment, and of the right of the shipper to the goods." This, of course, amounting practically to compulsion to sign, but the marginal statement is somewhat too broad.

There are many points of interest touched on in the course of Mr. Leggett's work. We hope that masters of vessels trading in the Polynesian seas, will read and weigh his exposition, on p. 78, of the barratrous character statutably affixed to the trade in natives of the Polynesian Islands, which has cost Great Britain so many sad losses. There are, no doubt, persons who designedly engage in this traffic, but there have probably not unfrequently been cases where a master has been tempted by a suddenly offered opportunity to make a little profit on his own account, without the knowledge of his owners, little recking the danger to those owners, or the hurt to the cause of Civilisation, not to speak of Christianity. The Kidnapping Act, 1872, has done what statute can to restrain such things. The recital of its provisions, in a book designed for the use of our Mercantile Marine, may do something more to bring the penalties home.

We are glad to observe the attention which the "York and Antwerp Rules" for the adjustment of General Average have

received at the hands of Mr. Leggett. Commencing at p. 299, with the York meeting in 1864, held under the presidency of Sir Fitzroy Kelly, he proceeds to give a narrative of the work then initiated, which slumbered till it was taken up in 1876 by the Association for the Reform and Codification of the Law of Nations, and practically reached its present point, under Lord O'Hagan and Sir Travers Twiss, at the Antwerp Conference of 1877. Mr. Leggett then prints the Rules in full, and expresses his opinion that they constitute a step—of course only a step—towards an International Code on the subject, the attainment of which is very desirable, but that the best course at present would seem to be to “consolidate and extend the adoption of the “York and Antwerp Rules.” The question will, no doubt, be discussed at the coming Liverpool Conference of the Association. The whole subject of the possibility of a codification of Maritime International Law was raised by M. Van Meenen at the Brussels Congress of Commerce and Industry in 1880, and his suggestions were reported upon to the Berne Conference of the Association in 1881, in a short paper by Mr. C. H. E. Carmichael, M.A. The subject is so considerable that it can obviously only be taken up in portions, and each of these portions will require time before it can be brought into anything like a consolidated form. The York and Antwerp Rules themselves, as the New York Chamber of Commerce remarked, only cover “a small proportion of the rules required to be settled in order to establish uniformity.” But they do cover some of the cases, and so far, therefore, as they meet with acceptance, they constitute an important step towards uniformity.

In conclusion, we recommend Mr. Leggett's book to the large class directly interested in his subject. It will be found of practical utility alike to the legal profession, to merchants, ship-owners, and to masters of seagoing vessels, who are bound, “by the custom of trade,” to sign Bills of Lading.

Prideaux's Precedents in Conveyancing. Eleventh Edition. By FREDERICK PRIDEAUX, late Professor of the Law of Real and Personal Property to the Inns of Court, and JOHN WHITCOMBE, both of Lincoln's Inn, Esqrs., Barristers-at-Law. 2 vols. Stevens and Sons. 1882.

Greenwood's Manual of the Practice of Conveyancing. Seventh

Edition. Edited and revised with special reference to the Conveyancing and Law of Property Act, 1881. By HARRY GREENWOOD, M.A., of Lincoln's Inn, Esq., Barrister-at-Law. Stevens and Sons. 1882.

The Conveyancing and Law of Property Act, 1881, and the Vendor and Purchaser Act, 1874. With notes. By W. MANNING HARRIS, M.A., and THOMAS CLARKSON, M.A., of Lincoln's Inn, Esqrs., Barristers-at-Law, Fellows of King's College, Cambridge. Stevens and Sons. 1882.

The Conveyancing and Law of Property Act, 1881, and the Solicitors' Remuneration Act, 1881, with explanatory and practical notes and Precedents in Conveyancing. By MERYON WHITE, M.A., of Christ Church, Oxford, and of the Inner Temple, Barrister-at-Law. Shaw and Sons. 1882.

Whether the Conveyancing and Law of Property Act, 1881, be or be not destined to effect a revolution in our time honoured and cumbrous system of dealing with interests in landed property depends mainly on the satisfactory working of the General Orders as to costs, which have yet to be issued under the new Solicitors' Remuneration Act. In the meantime, the revolution seems to be pretty generally accepted in the Profession as practically a *fait accompli*, and editions of the Conveyancing Act with more or less of annotation and comment, as well as new editions of standard works adapted to the altered state of the law, follow one another in quick succession. Of the latter class, one of the earliest, if not the earliest, to appear has been the eleventh edition of Prideaux's well known "Precedents in Conveyancing," which has long and deservedly enjoyed the favourable regard of Solicitors. A new edition (the tenth) had only been issued in June last. With commendable enterprise this was set aside by the publishers, and by dint of hard work on the part of the learned authors, the present edition was prepared and published before the end of the year. The whole of the precedents have been revised by the light of the new Act with discriminating care; and to those who have been accustomed first to the copiousness of Bythewood, and later to the fulness of Davidson, the conciseness and scientific precision of these Precedents of the Future are at once pleasing and startling. We agree with Mr. Prideaux and Mr. Whitcombe that, however natural may be the reluctance to abandon forms, clauses, and expressions sanctioned by long usage and experience,

"there can be no doubt as to the propriety of doing so when they are clearly superfluous." We may add that, when the vicious system of payment by length has been swept away, it will be undoubtedly the interest, as well as the duty, of Solicitors, to make all deeds and documents as short and as intelligible to the lay mind as the circumstances of each case will admit of. Besides revising and adapting the old precedents, the Authors have added many new ones suggested by the requirements of the Act. The valuable Dissertations on the law and practice, which have always formed a feature of these volumes, have been revised throughout and brought into conformity with the various changes and modifications introduced by the new Act: and on the whole we can confidently recommend the latest edition of "Prideaux" as in every way worthy of the reputation which it had already acquired.

The present edition of Mr. Greenwood's excellent "Manual of the Practice of Conveyancing" is due, like the re-issue of "Prideaux," to the passing of the the new Conveyancing Act, barely a year having elapsed since the publication of the 6th edition. The author has carefully worked the provisions of the Act into his text, calling special attention to the effect of those sections which make absolute changes in the law, as distinguished from those which are merely optional for adoption or exclusion. No change was required or has been made in the general arrangement of the work; but all the Forms have been thoroughly revised, and by the means of brackets many of them are made capable of being used as precedents either under the old or the new system. This will probably be found convenient by practitioners during the transitionary period upon which we have just entered.

Mr. Harris and Mr. Clarkson are of opinion that revised Forms of Precedents under the Conveyancing Act, 1881, are either unnecessary or, in the more difficult cases of drafting, useless, and that a draftsman of ordinary skill will have no great difficulty in adapting the precedents to which he has been accustomed to the provisions of the new Act. This may be so; but we anticipate that most conveyancers, and more especially Solicitors, will find a set of precedents revised in conformity with the Act, if not absolutely necessary at any rate extremely convenient. Acting on their

view of the requirements of the case, Messrs. Harris and Clarkson have refrained from putting forth any revised precedents, and have restricted themselves to the issuing of an edition of the Act of 1881, supplemented by the Vendor and Purchaser, Act, 1874. This juxtaposition of the two Acts, for each of which we are indebted to Lord Cairns, and which ought in fact to be read together as forming integral parts of his scheme for the amelioration of Property Law, will be found a practically convenient arrangement. The notes, which are intercalated between the sections of the Acts, are both elaborate and valuable. Summaries of the previously existing law are given wherever necessary, and supported by references to decided cases and the received text books. The Index is specially full and clear.

Mr. Meryon White, who is favourably known as author of the "Weekly Notes Digest of Cases not reported in the Law Reports," has produced a handy edition of the Conveyancing Act and the Solicitors' Remuneration Act, 1881. In a brief Preface the principal changes introduced by the Acts are clearly and succinctly set out. This is followed by the text of the Acts interspersed, section by section, with concise explanatory notes. These latter are tersely expressed, practical in character, and bear evidence of care and research on the part of the author. In addition to the Statutory Forms given in the Third Schedule of the Act, a collection of twenty-seven Precedents has been added, modelled in conformity with the new Act, and comprising most of the ordinary transactions in conveyancing. A table of cases and fairly full index complete the work, which will probably not be among the least popular of the various editions of the Conveyancing and Law of Property Act, 1881.

Simon Van Leeuwen's Commentaries on Roman-Dutch Law, revised and edited with Notes in two volumes by C. W. Decker, Advocate. Translated from the original Dutch by J. G. Kotzé, LL.B., Chief Justice of the Transvaal, of the Inner Temple, Barrister-at-Law, and Advocate of the Supreme Court, Cape of Good Hope. Vol. I. (with portrait), Stevens and Haynes. 1881.

The value of the Dutch School of Roman Jurists is considerable, and the influence which it has exercised has been

widely felt in bygone days. As long as Latin was the medium of inter-communication among men of science in all its branches, this influence lasted, more or less. But it must be admitted that the change from Latin to Dutch narrowed the power of the Dutch Jurists, as a factor in the world of Juridical and Political Science. Even their Latin style was, at any rate in the case of Voëtius, very crabbed and uninviting. We well remember how feelingly the late Sir Edward Creasy, after long years of acquaintance with the great Dutch Jurists, would speak of the crabbedness of Voet. And this is probably the reason why his great Commentary on the Pandects is so little referred to, and why the translation of it, commenced in a tentative manner by Sir Roland Wilson, seems to have been abandoned. Yet the school is one worth knowing. Professor Rivier, in his *Introduction Historique au Droit Romain* of which we spoke in our last issue, has done the Roman-Dutch Jurists full justice, and they are no doubt better known, even now, on the Continent than in England. Nevertheless our own interest in the school is really more direct and more practical than that of its Continental students outside the Kingdom of the Netherlands. For we have to administer Roman-Dutch Law in those of our Colonies which were under Dutch rule, and that is a very practical reason for studying Roman-Dutch Law.

In this respect, indeed, we resemble the old Counts of Holland, of whom Van Leeuwen is so careful to state that they were "*Principes pactionati*." This, of course, is true of the Princes who were chosen to rule over the Netherlands. But it is also equally true of Princes who have been less regardful of the Pact than the Counts of Holland. William the Conqueror was a "*Princeps pactionatus*" no less than his immediate predecessor, and Harold was as much "*pactionatus*" as the last of the kings of the line of Cerdic. In point of fact, in the case of Harold, there was in all probability a conflict of Pacts, a conflict between his Pact with his own subjects and his previous Pact, extorted under duress, if not by guile, with William of Normandy. Which of the two approved itself to Harold as the one to keep above all others, there yet stands enough of the Abbey of St. Martin of Battle to tell us. Not every Prince, however, has so faithfully kept his Pact with his own people. There is much quaint historical lore scattered up and down the pages of Simon Van Leeuwen, and it is presented to us by Chief Justice Kotzé in a style which seems to have caught no

little flavour of the original. His familiarity with the practice of his author's system of Law, as well as with our own, renders the Chief Justice a most fitting exponent of Roman-Dutch Law for English readers. There are some points on which it seems to us at least probable that analogies might be traced where as yet we do not find the learned Translator pursuing them. The Orphans' Court, for instance, which, in the case of his own State, Mr. W. H. Rawle, in his recent Lecture to the Law Students of the University of Pennsylvania entitled, *Some Contrasts in the Growth of Pennsylvania and English Law* (Philadelphia, 1881), assumes to have been derived directly from the customs of the City of London, may in other States of the American Union have had a different origin. It exists, if we mistake not, in the State of New York and in the District of Columbia. May not the old Dutch element in the New England States be credited with some share in this institution, when we consider the Weeskamer, or Orphan Chamber of the States of Holland, described by Van Leeuwen? The portion of the *Commentaries on Roman-Dutch Law* now before us is a good earnest of the interest of that which has yet to come. Until the book is completed and rounded off by an Index, it cannot, of course, fully bear witness to their real value. The completion of the work will, we trust, not be long delayed, and we shall then have received at the hands of Chief Justice Kotzé an *édition de luxe* of the *Commentaries* of Simon Van Leeuwen, who ranks with Grotius and Van der Linden as a ruling authority in the Courts of the Transvaal.

The Country Solicitor's Practice. A Handbook of the Practice in the Queen's Bench Division of the High Court of Justice; with Statutes and Forms. By W. F. A. ARCHIBALD, Esq., Barrister-at-Law. Stevens and Sons. 1881.

Notwithstanding the Report of the Judicature Commission on the proposed alterations of Practice, much uncertainty still exists as to the scope of the changes which may ultimately be adopted, and no inconsiderable delay may yet occur before any definite alteration is really made. * Under these circumstances Mr. Archibald, having already withheld his work on the Practice of the Queen's Bench Division for some time, has

thought it best to give it to the public at once. Why he should have called it the "Country" Solicitor's Practice, unless for the mere purpose of making it more distinct from other existing "Practices," we fail to see; and although the arrangement may in some respects be convenient, we cannot say that we approve of having separate books of Practice for each of the two great Divisions of the High Court. Be this as it may, the author has produced a thick volume of nearly 1,300 pages, replete with every information which the Practitioner in the Queen's Bench Division can require. The arrangement of the subject-matter follows a natural sequence; and the statements are lucidly expressed and duly supported by references to decided cases, Orders, &c. The Appendix is remarkably full, comprising a selection of the principal Statutes, the Rules of Court, and Forms. The "Additional Forms" will be especially useful, and the epitome of decided cases on the Orders given in the Appendix adds considerably to the value of the work. No small amount of labour and care have evidently been expended by the Author in order to render the volume as complete and trustworthy as possible, and we have no doubt that it will meet with due appreciation at the hands of both London and Country Solicitors.

SMALLER BOOKS AND PAMPHLETS.

Mr. N. J. Highmore, of the Middle Temple and Barrister-at-Law, and of the Inland Revenue Department, has brought out a clear and useful manual of the *Summary Proceedings in Inland Revenue Cases in England and Wales* (Stevens and Sons, 1882). Since the passing of the Summary Jurisdiction Act, 1879, such a book must have been frequently wished for, and Mr. Highmore seems to us to supply the want in a form convenient alike for Magistrates and Inland Revenue Officers. It may be a comfort to some persons to learn that the doctrine of "*idem sonans*" is decided not to apply to such variants as "Shutliff" and "Shirtliff," nor, *pace* the Bard of Avon, to "Shakespeare" and "Shakespeare." The scope left for variation in description is, however, still very wide. It may even, on perusal of section 27, chap. iv., of Mr. Highmore's book, give the impression of being rather uncomfortably wide. The "*Fiscus*" has generally known how to take care of itself in all ages and countries.

In his new manual *A Concise Abridgment of the Law of Personal Property* (Stevens and Sons, 1882), Mr. J. A. Shearwood, of Lincoln's Inn, Barrister-at-Law, provides a companion volume to his previous Abridgment of the Law of Real Property, and which will be equally useful to the class of students desiring such helps. The style is generally clear, and much more readable than is often the case with Abridgments. We note, for a future edition, one or two slight errors of press. On p. 18, for *delegari*, read *delegare*; on p. 60, under "Property is Separate Estate," &c., 6, iv., "sums of £20 or in the public stocks," seems to be an explanation suffering from a *hiatus valde defendus*; and on p. 107, l. 6 from top, the sense is materially altered by the insertion of a comma after "whenever it is inexpedient to do so," which should clearly be removed. These are, of course, purely matters of press-reading, which do not affect the general utility of Mr. Shearwood's method of treating his subject.

Lord Cairns's Conveyancing Act forms the subject of a *Concise Exposition, with Practical Hints*, by Arthur Underhill, LL.D., of Lincoln's Inn, Barrister-at-Law (Richard Amer, 1882). Mr. Underhill, whose works on the *Law of Trusts and Trustees*, and on the *Law of Torts*, have been noticed in this Review, has published in pamphlet form a useful lecture on the new Act, which he delivered before the Wolverhampton Law Students' Society. It is necessarily very concise, and the language is, as the author admits, somewhat familiar in its tone. But this familiarity is not intended to breed contempt for the Act, and may help some students to see the full bearing of points they might otherwise miss.

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I.—THE FAMILY LAWS OF ENGLAND AND ISLAM.

ONE night, some years ago, I had (or might have had, which will answer my present purpose nearly as well), a distressing dream, of which the scheme was so methodical, the colouring so vivid, that it seemed designed to leave a permanent impress on my memory and to serve as a guide and warning to regulate and control my future conduct.

I thought that I had recently died, leaving a young family, who might be expected to be well provided for, as I had, in my life time, secured an ample share of that which constitutes the wealth of mortals. I was allowed to look down and see how it fared with my children, though the time had passed when I could have said or done aught that could influence their fate. Imagine my grief and indignation, when I saw that my eldest son alone was master of all, while the others, brought up like him in luxury and unprepared to struggle with the world, had neither patrimony of their own nor the capacity for winning a livelihood from others. Too late I remembered that all my hoarded moneys had been exchanged for an extensive domain which might have been charged with ample portions for all and yet left its owner wealthy; but I had put off making a will till death had seized me unawares, and now the law had given countless acres to the heir-at-law, not a rood to his

brothers and sisters, though they should perish in the streets for want of it.

The scene gradually changed as in a dissolving view ; I was still dead, I was still the man who had acquired a fortune and had left a family to take it as the law should direct ; but there were now no sons, and the money had not been exchanged for land, but had been inherited by my *several daughters in its original form*. At first I thought that all was well this time, for my vast wealth was equally divided among my children, and what more could the fondest father have done to secure their comfort and happiness ? But my joy was of brief duration ; even as I looked, they became wives one after another ; the law gave the whole to their husbands, and, as these happened all to be spendthrifts, my poor daughters and their little ones were soon reduced to destitution.

Again there was a partial shifting of the scene, as if in obedience to an impatient yearning within me, and I now seemed to have left only one daughter, the inheritrix of all my property, which, in this instance, had again been converted into land. Here, I said to myself, will safety at least, if not independence, be found, for I happened to remember that the law of England deems a husband and wife to be "jointly seised" of the wife's real property in right of the wife. But I soon perceived, to my great disappointment, that the working of the law was very different from its wording ; the wife's "joint seisin" did not prevent the husband from selling the broad acres for the period of his own life, and thus acquiring an ample fortune for himself, while my unlucky daughter had nothing left except the vague prospect of getting back her land on the day that would see her clad in widow's weeds.

While I was still lamenting my own negligence, which had been, at least in part, the cause of the various

miscarriages that had occurred, I found myself changed, with the instantaneous but not abrupt transition which seems so natural in dreams, from a deceased intestate into a deceased testator. The result, however, was by no means consolatory; it seemed that in a moment of anger I had quarrelled with my only son; and, seized in the grip of death before there had been time for a reconciliation, I had left an erring but beloved child to a life of penury, while all my property, real and personal, had gone to a distant relation who had enough and to spare already.

In despair I seemed to cry aloud, "Who shall deliver me from this demon of law, which, either by what it does, or by what it suffers me to do, works ruin to all that are near and dear to me?" In a moment a grave and kindly Elder stood before me, clad in flowing robes and wearing a folded head-dress which showed his Oriental birth and nurture. "Christian," he said, "I am not of thy race or of thy religion, but one of the poets of thine own clime hath said that it is lawful to learn even from an enemy—yet am I not thine enemy, for thou art a *Kitabee*, a believer in the sacred book, and I wish thee well. I am Abu Hanifa, who twice refused the office of Kazi, because I deemed myself too lowly for so great an honour; yet have my sayings been handed down as those of one most worthy to teach to mankind the laws of our Prophet. Mark well the precepts which thou shalt find in the writings of my successors which I shall give to thee, and if thou shalt judge them to be good thou mayest impart them to thy countrymen for their advantage." And with that he gave me two scrolls, one of mighty size, intituled "*Al Hedaya*," the other of smaller dimensions, called "*Al Sirajiyyah*." From the perusal of these books I became aware that mischances such as those above described, and many others, would be rendered impossible in England if certain branches of our law could be remodelled and

brought into conformity with the views of justice entertained by Mohammedan lawyers.

It may, perhaps, be a matter of some surprise that if, as I fearlessly assert, the English law might thus be improved in many important points by the study and imitation of the law of Islam, that circumstance should now be insisted upon, apparently, for the first time. It is probably within the knowledge of all Englishmen of average education that the first founder of the Mohammedan religion was a law-giver as well as a warrior and a prophet; but few, perhaps, are aware that the legal system which he bequeathed to the world is remarkable for its justice, discrimination, and unrivalled symmetrical beauty. It may be asked, not unreasonably, why, if this system be really so well worthy of notice, it has hitherto attracted so little attention; but the reasons are not far to seek. The law of Mohammed, in its maturer development under the hands of the successors of the Prophet and his companions, was the product of a period when Christian and Mussulman were in constant and mortal antagonism, a period when it was little to be expected that either of the two great divisions of the civilised world could bring good temper or fair judgment to bear on anything connected with the institutions of the other. Moreover the people of mediæval Europe, alike in palace and in cottage, were rough and warlike, and there was no place among them, as yet, for the softer culture which had already made its way among the more successful and prosperous of the Eastern races. When we again met the Moslem in later times, our own law had progressed and had been fashioned into a system which, if not indeed very reasonable or harmonious, had at least come to be respected from habit, so that we thought it enough to allow the Mohammedan inhabitants of India the use of their own laws, and did not dream that the study of those laws could be of any advantage to ourselves. It might

have been thought, at least, that our judges would have recognised their merits, if merits there were, and made them known to their countrymen; but the circumstance that native advisers were attached, until lately, to the Anglo-Indian Courts, seemed to obviate the necessity of studying Indian law, and it is to be feared that, even now, this description of learning is much neglected, for we hear of clamours, backed by Europeans of high position, for the effective revival of the offices of Kazi and Prádviváka.* If the desired revival should take place it will be a practical condemnation of ourselves, a tacit confession that we have proved unequal to one of the most important tasks that we have undertaken. In the meantime the mere fact that it is called for is enough to show that we have not brought to the performance of our trust all the zeal that was anticipated and inculcated by Warren Hastings and other patriarchs of our Indian Empire.

Having now, I hope, shown that there may possibly be something worthy of notice in the laws of Islam, I will ask the reader to accompany me a little farther, while I point out to him a few practical and intelligible details, so as to enable him to judge for himself whether I am right in my general contention, or whether I am to be dismissed as a crotchety and egoistical partizan, who thinks too much of his little pet corner in the field of legal knowledge.

I will begin by considering the position of a Moham-medan husband and wife as regards their respective

* An official paper lately published in India contains a letter signed by Dr. G. W. Leitner, President of the Anjuman-i-Punjab, and supported by the petition or memorial of 246 Mussulmans of Lahore, praying for a general restoration of the native magistracies, *with coercive powers*, principally on the ground that questions of family law are puzzling and bewildering to the existing Courts. Imagine a memorial from the inhabitants of Devonshire or Cornwall, praying for the appointment of local judges on the ground that questions concerning marriage, heirship, and the like, are puzzling and bewildering to Her Majesty's Supreme Court of Judicature!

property and their mutual property-rights arising from the marriage. It may first be observed that there is no trace of a right in the husband, such as exists in England, to use for his own benefit and advantage almost every kind of property that the wife may have. By the English common law—which is only partially affected by certain modern Acts of Parliament—the wife's personal property, speaking generally, passes entirely to her husband, who also enjoys the rents of her land during her life, and (under the name of "curtesy") the land itself during his own life if he survive her and have any child by her who "may by possibility inherit." The wife has not even the power, independently of the husband, of dealing with the shadowy interest in the land which still remains in her; so that she must content herself with the moderate satisfaction of knowing that she will get it back if she survive the husband, and that, if not, her heirs, who may be distant relations, will some day have it. All this manifest hardship is unknown to Mohammedan law, which leaves a wife mistress of her own property, just as it leaves a husband master of his. But this is not all. In Mohammedan countries the marriage actually causes an addition to the wife's fortune under the name of *mahr*, or "dower," a payment incumbent upon the husband, and assessed by the law itself unless a particular sum or other property has been specified. In England there is nothing very closely answering to the Mohammedan dower. It is true that the wife is primarily entitled, under the same name of dower, to a third part of her husband's lands during her life if she survive him, but the negligence or connivance of long-forgotten judges—presumably all married men—enabled husbands long ago to contrive a mode of evading this right; and the legislature, in the reign of William IV., rendered further artifice unnecessary by permitting them openly to repudiate it. Eminent Chancellors repeatedly

declared that they could not understand why trust estates were liable to dower though not to curtesy, a distinction which formed the basis of the contrivance above mentioned, but the distinction was nevertheless maintained until the legislature rendered it unnecessary by enabling husbands to take from their wives, without its assistance, almost the only chance of a provision which the common law had left them. I say "almost," because the wife resumes her rights, as mentioned already, in her own lands, and it may be added, in personal property which has not been reduced into possession, if she survive her husband. I need scarcely ask the reader to observe how slender are these contingent expectations as compared with the free and natural rights which the law leaves untouched in the case of Mohammedan matrons.

There have not been wanting critics from time to time who have found fault with the husband's almost plenary rights, and have even gone so far as roundly to declare that marriage is another word for confiscation of the wife's property; but the champions of English law have complacently answered, "By no means, for you must remember that, in return for what the wife gives up, she obtains a right to be maintained by the husband." It is true that she obtains this right, such as it is; but, in the case of a woman possessed of property of substantial value, the exchange is about as equitable as that of Glaucus with Diomede on the plains of Ilium. In Mohammedan countries no such exchange is called for, a wife being entitled to maintenance according to her rank in life without the condition precedent of having to sacrifice almost everything that belongs to her. It may be added that the remedy for want of maintenance is directly enforceable under Mohammedan law, and that all the details are more thoughtfully worked out than in England, where, indeed, the wife's right to maintenance seems to be virtually co-extensive

with her power of persuading tradesmen to serve her, with the melancholy prospect before them of having to convince a judge and jury—probably husbands to a man—that they have made all kinds of nearly impossible inquiries, and have not supplied an ounce more of anything than the precise circumstances of the case require.

Thus left in undisputed possession of her own property and effectually provided for by her husband during his life, entitled, moreover, to a dower of which nothing short of the entire destruction of her husband's fortune can deprive her, what, it may be asked, can the wife want more? Yet the Mohammedan law deems her worthy of a still further provision if she survive her husband, and gives it to her notwithstanding all claims of relations and all testamentary dispositions by the husband. As the will of a Mussulman, even if it purport to dispose of the whole estate, can operate only to the extent of a third, there must always be two-thirds at least to satisfy the claims of inheritance, and of this *corpus* the wife is entitled to an eighth if there are children, or children of sons or sons' sons, &c., and to a quarter if there are none. No conceivable event can oust her altogether of this share, for it is laid down that a wife, a husband, parents, and children, can never be excluded from inheritance. It is true that the share may be liable to proportionate abatement if the claims be numerous (a subject which will be mentioned later) and it will have to be divided among several wives if there are more than one, but it is not in the power either of the husband or of circumstances to rule that the wife shall have nothing. In England, on the contrary, a husband may, if he will, devise and bequeath all his property to a stranger and leave his wife to be supported by the public. In case of his intestacy she will, it is true, have a third of his personal property if he has left children or other issue and a half if not, but

her interest in his lands is limited to the right of dower, which, as already explained, has long been entirely at the husband's mercy.

If a Mohammedan wife die before her husband, the husband is entitled to inherit from her, but his right is strictly limited to a particular share, namely, a quarter if there are children or children of sons or sons' sons, &c., and a half if there are none. It will thus be seen that the share of a surviving husband is double that of a surviving wife, a preferential distinction in favour of the male, which, with one or two exceptions, runs through the whole Mohammedan law; that law recognising, in a moderate and judicial spirit, a degree of superiority in the stronger sex, but lending no sanction to the barbarous fiction which dwarfs one sex to nothing in the immeasurable greatness of the other. We have seen that, in England, the husband would, generally, have become absolute master of the wife's personal property in her life-time; and now, if any fragments of it should have escaped his much-devouring "marital right," they will descend to him upon her death, while her lands, though devolving ultimately upon her heirs, will be her husband's to all intents and purposes until his decease. It may be added that even the distant right of the heirs in respect of the land is subject to be defeated in the husband's life-time by the wife's disposing of it with his concurrence.

We proceed in a natural order from wife to children; but in the case of the latter the subject of maintenance assumes the foremost place, for children may be looked upon generally as not having at the commencement of their connection with the parent, in other words, at the moment of birth, any property of their own.

The father is bound, by Mohammedan law, to maintain his children of both sexes according to his own condition, the daughters until marriage, and the sons, generally, until

they are adult (puberes) and capable of earning their own living. The sons may be hired out to service while still entitled to maintenance, but in such case the father must maintain them out of their wages, and lay by the surplus, which he must pay to them on their attaining maturity. If, however, the father's character be such that he cannot be trusted to do this, the Court may take the surplus out of his hands as it accrues and cause it to be paid to the sons at the proper time. The Court has power also to order periodical payments by a father to a mother for the maintenance of children in a manner suitable to the condition of the father. Weak and infirm children who cannot work for their living must be maintained even after they have attained maturity.

In some respects the above rules are very nearly the same as our own ; but the English law is inferior in two important points, the first, that it does not require a father to maintain his children *according to his own condition* ; the second, that it makes no provision for securing to a child the surplus earnings of its own labour. It may be added that it is less indulgent than the Mohammedan law to the weakness of the female sex, for it gives to female children no longer right of maintenance than to male. Finally, in the words of a well-known English writer, the obligation that every man shall maintain his own children " is one which our law seems to have given no direct means of enforcing, perhaps because its neglect was considered an improbable case." * The fact that the provisions of the law are scanty may readily be admitted, but the reason suggested would seem; from the records of our courts, to be somewhat problematical.

It is important to add that the right of children to maintenance under Mohammedan law is expressly made dependant upon their actually requiring it, the property of every person, male or female (except, apparently, a wife),

* Stephen's *Commentaries*

being primarily liable for his or her maintenance, so that, if the children have sufficient property* of their own, the father is relieved from the burden. The common law of England, it would seem, makes the father liable in all cases, so that, even if the children are possessed of ample means, he is still bound to support them as if they had nothing. It would seem, however, that the 26th section of the Act 23 and 24 Vict., c. 145 (commonly called "Lord Cranworth's Act,") brings our law into practical conformity with the Mohammedan law in this respect, by authorising trustees to use the income of trust funds for the maintenance of infants whether there be any person bound by law to provide for such maintenance or not.

After the death of a Mussulman the rights of the children who survive depend upon a variety of circumstances; but it may save trouble to mention, *in limine*, that succession to the estate of a married female is precisely the same as succession to that of a married male, with the single exception that, as above-mentioned, a larger share of the former goes to the surviving matrimonial partner, so that a smaller quantity is left for the other inheritors. If one son be the only surviving relation of a deceased male or female, he will take, as a "residuary," the remainder of the estate after payment of the wife's or husband's smaller share; and if there be several sons they will take it equally among them. On the other hand, if there be only one daughter surviving, she will take, as a "sharer," half of such remainder, and if there be several, they will take two-thirds of it equally among them. Under some circumstances a sharer or sharers will take all that remains, in addition to his or their particular share or shares; but this will be mentioned later. If there be a son and daughter, sons and daughters, or the like, each daughter will become a "residuary" instead of a "sharer," but will take only half as much as each son. By this ingenious device a daughter

is prevented from ever having as much as or more than a son, and the general principle is maintained that a male shall have twice as much as a female who is similarly related to the deceased.

It has been pointed out that the estate divisible among the children must undergo a diminution of an eighth or a quarter in case a wife or husband survive the deceased. And it may have to undergo a further diminution to the extent of two-sixths by the survival of parents or grandparents of the deceased. There are no other claims which can take effect concurrently with those of sons and daughters, so that there must necessarily be, at the least, five-twelfths of the estate left to divide among them. The astute reader will perceive, no doubt, that if there be a daughter or daughters and no sons this will not always be enough to make up the fractions required; but all such contingencies are provided for by a rule called the "increase," under which, when the shares exceed the whole estate, they are made to abate in due proportion. Thus, if there be a husband, father, mother, and daughter, the shares are originally, $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{4}$, $\frac{1}{2}$; or $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{4}$, $\frac{1}{2}$; but by the "increase" (*i.e.* increase of the denominator, or number of parts) the 12 becomes 13, and the shares will be $\frac{1}{3}$, $\frac{1}{4}$, $\frac{1}{4}$, $\frac{1}{2}$. It will be seen, again, that if there be a daughter or daughters, and no sons, the shares may in some cases be insufficient to exhaust the estate. This again is provided for by a rule called the "return," under which if there are no residuaries (in other words, no males related entirely through males, or, in the particular case of daughters, sons' daughters, &c., no sisters or paternal half-sisters), the sharers, other than the husband or wife, take the surplus among them in proportion to their respective shares. Thus, if there be a husband and five daughters, the shares are primarily, $\frac{1}{2}$, $\frac{1}{5}$; but the daughters will take the residue among them, so that they will ultimately get $\frac{1}{5}$. If, on the other hand, there had been a paternal uncle or a

sister, such person, as a residuary, would have taken the remaining $\frac{1}{3}$, and the daughters would only have taken their primary share.

It must be remembered that the rights of sons and daughters, and, indeed, those of all inheritors whatsoever, though subject to a power of testamentary disposition to the extent of one-third, will take effect as to the whole estate if such power be not exercised; and it may be here mentioned that the expectations of inheritors cannot be defeated by dispositions in favour of another inheritor, a devise or bequest to any such person being invalid unless confirmed by the others after the testator's death.

In our own country there is a risk, in the first place, that the parent, if a male or a female not under coverture, may have made a will, and, to use a phrase once much in vogue, "cut off" the sons and daughters "with a shilling." Even without going so far, he or she may have made such dispositions as will deprive the children of much of the property or enrich one or more of them at the expense of the rest. If the parent, at death, be a female under coverture, this danger does not exist, but such a parent, in most cases, has nothing but land to leave behind her. Supposing the deceased to have left the whole or part undisposed of by will, the land, subject to the estate by curtesy or dower, if any, would go to the eldest or only son, and if none, to the daughters equally. The personal property of a male, subject to his wife's claim to a third if she survive, would go equally among the sons and daughters, and that of a female would descend in the same manner if she left no husband, but if there were a husband surviving he would be entitled to the whole.

Going now beyond the limits of the immediate household, we have to consider, first, the position of relations generally with respect to maintenance. As to this, subject to the primary rule (already mentioned) that every person must be

maintained out of his own property, a man must, generally, maintain his father, mother, grandfathers, grandmothers, infant male relatives (and even adult, if poor, and also disabled or blind) within the prohibited degrees, and female relations, whether infant or adult, within the same degrees.*

In England, the law of maintenance of relations other than children is not very clearly defined, and, with reference to parents, it is stated by the author whom I have already quoted that "in this country the law has not deemed it necessary to make much provision on the subject of filial obligations."† It must be admitted, however, that in the interests of the ratepayers the legislature forbids children to leave their disabled parents to starve, for it is laid down as part of our poor law that parents who are old, blind, lame, impotent, or otherwise poor and unable to work, shall be relieved and maintained by their children in the manner and according to the rate that the justices in quarter sessions shall direct. And there are somewhat similar provisions as to one or two other relations, but the law seems to limit its care in this respect to parents, children, grandchildren, husband, and wife, leaving the rest of the family to the general protection from actual nakedness and inanition which may be obtained by having recourse to "the parish."

The succession of relations other than children is so wide a subject and involves so many intricacies that I cannot make any attempt to treat it here in full detail. All that I can hope is to be able to place before the reader a picture, correct as far as it goes, fairly illustrative of general principles, and just sufficiently minute to enable him to compare the outlines of the Mohammedan law on the

* Without going fully into the subject of prohibited degrees of marriage, it may be as well to mention that they extend to all ancestors and descendants, and to collaterals as far as the third degree inclusive.

† Stephen's *Commentaries*.

subject with those of the laws which regulate the descent of property in our own country.

It has already been seen that some relations are sharers, or persons taking a prescribed fractional part, and others residuaries, or persons who take the residue after payment of the shares, and the whole when there are no sharers; among the former are the father and true grandfather (male ancestor with no female intervening), either of whom takes a sixth, and also takes the residue in the absence of any son, son's son, &c ; the mother, who takes a sixth at the least, but has a third unless there are children, sons' or sons' sons', &c., children, or two or more brothers or sisters of the whole or half blood; and the true grandmother (female ancestor with no false grandfather intervening), who takes a sixth. Among the grandfathers and grandmothers, however, only the true are sharers, all false grandparents (whose definitions are, of course, the converse of those of the true) being among the "distant kindred," whose definition will be given hereafter. In addition to these, the following also are sharers; sons' and sons' sons', &c., daughters, sisters, consanguine sisters, uterine brothers, and uterine sisters.* Of these the sons', &c., daughters, sisters, and consanguine sisters take primarily the same shares that daughters would take; but if there are several daughters, the sons', &c., daughters take nothing; while, if there is one daughter only, she takes her half, and the sons' &c., daughters take a sixth, being what is left out of two-thirds, which would have been the share of several daughters. Consanguine sisters, when there are sisters also, fare similarly to sons', &c., daughters when there are daughters. If there are daughters or sons', &c., daughters

* The word "uterine" will probably be understood as indicating the half blood on the mother's side. The word "consanguine" (based upon the French "consanguin") I have used for some years to indicate the half-blood by the father's side.

and also sisters or consanguine sisters, the latter cease to be sharers and become residuaries, taking what is left after payment of the shares. Sons', &c., daughters, sisters, and consanguine sisters are all excluded by a son; consanguine sisters by an actual brother; sisters and consanguine sisters by a son's son, &c.; and sons', &c., daughters by a higher son's son; but any of them will become residuaries (each female taking half as much as each male) if there be a male or males having the same relationship to the deceased with themselves. Uterine brothers and sisters stand on a different footing from the other collateral sharers, taking only a third if there be more than one, and a sixth if there be only one. In this case males and females have equal portions, irrespective of sex; and, as the males are not residuaries, the females are not liable, like daughters, sisters, &c., to become residuaries by the presence of a male.

It will readily be seen that if all kinds of sharers could demand their shares at once the estate would often be very minutely subdivided. But this result is guarded against by the rules of exclusion, to which some allusion has already been made. An enumeration of all these rules would take a good deal of space and is scarcely necessary for our present purpose; it may be mentioned, however, that a son, son's son, &c., excludes all collaterals, a father excludes a true grandfather, a mother a true grandmother, a true grandfather or true grandmother a more remote true grandfather or true grandmother; and, as a general rule, any person excludes another who is related through him to the deceased. To the last mentioned rule, however, there is this exception, that brothers and sisters, whether uterine or of the whole blood, are not excluded by the mother although they are related through her.

It has already been stated that residuaries succeed to all that is left by the sharers and to the whole if there are no sharers; and it has also been explained that residuaries

are all males between whom and the deceased no female intervenes* If all the residuaries are related in exactly the same degree they divide the property equally among them, but if they are of different degrees it may be taken as a general rule that the nearer exclude the more remote, so that only the former succeed. But in judging which are the nearer the law takes account of the line of descent, dividing the residuaries primarily into four classes—those who are descended from the deceased, those from whom the deceased is descended, those who are descended from the father of the deceased, and those who are descended from his father's father. The members of these classes succeed in their order of enumeration, and a member of any of them succeeds in preference to a residuary beyond the limits of the classes. Another important rule among residuaries is that the whole blood excludes the half blood ; so that, for instance, a brother excludes a consanguine brother, and a paternal uncle excludes a consanguine paternal uncle.

It is clear that our inquiries might cease at this point if we could reckon upon the deceased always being survived by one or more of the relations called residuaries. But it is, of course, possible that there may be no persons of this description surviving, and in such case we still have to seek inheritors for the whole property if there be no sharers, and for a portion of it if there be a husband or wife but no other sharer ; for it must be remembered that, while any other sharers would take the residue by the "return," a husband or wife cannot be entitled to the return. These ulterior inheritors are found in the "distant kindred," a term which is defined as including all relations of the deceased other than sharers and residuaries. From what has been said above as to sharers and residuaries, it will

* The word "residuaries" is used here in its more familiar sense of male residuaries, or residuaries "in their own right;" it will be remembered that, in its more extended sense, it includes females under certain circumstances.

readily be seen that the distant kindred are, in fact, all female relations who are not primarily sharers, and all male relations, except uterine brothers, who are not connected with the deceased by a complete chain of male relations. The distant kindred usually divide the property equally among them when related in the same degree, with this exception, that females take half portions as compared with males, a distinction quite in analogy with the rule under which a female sharer who becomes a residuary takes only half as much as a male. In order to regulate the priorities when the degrees are not equal, the distant kindred are divided into four classes, which correspond, with some minute points of difference, with those of the residuaries, and the right to inherit depends primarily on the order of the classes. When there are several persons of the same class, the nearest in degree generally takes, but each class has its own particular rules, which are well worthy of notice on account of the minute care with which they are elaborated, but which the limits of this article do not permit me to place before the reader in detail. It may be mentioned, however, that, generally, a child of a sharer or residuary is preferred to a child of a distant kinsman or kinswoman, and a descendant of a relation of the whole blood to a descendant of a relation of the half blood; and, further, that when there are relations on the paternal and also on the maternal side, the former take two-thirds, the latter one-third, among them. The last rule is a logical result of the general law as to sexes mentioned above in dealing with relations of the more favoured descriptions; for, as the mother's share, if she were living, would be one-third, while the father (as sharer and residuary) would take the remaining two-thirds, these fractions are given, as the mother's and father's "allotments," to their respective descendants.

The canons of English law as to relations other than

sons and daughters are of a less elaborate character. The rule which gives a preference to a child of a sharer or residuary cannot, of course, have any existence. It will no doubt be remembered that the relations may find themselves wholly or partially disinherited by will. If anything is left to descend by the spontaneous operation of law, the land goes entirely to the eldest son of the eldest son or his descendants; and if the eldest son has left no son, but a daughter or daughters, then to such daughter or equally among such daughters. If the eldest son has left no descendants of either sex, it will go in like manner to the descendants of the second, third, &c., sons, and, if there be none, then to collaterals in a regulated order of which the general characteristic is that the descent to a single male is preferred *ceteris paribus*, though females equal in degree, or the descendants, male or female, of such females respectively, may inherit together. It may be further mentioned that the whole blood is preferred to the half blood, and that the relations on the maternal side can get nothing so long as any on the paternal side exist. The personal property, on the other hand, subject to the widow's fractional right, goes among the grandchildren or remoter descendants of both sexes in the manner called *per stirpes*, in other words, each person or set of persons will stand in the place and be entitled to the exact share of the person through whom his or their inheritance is derived. In the absence of descendants, the father (subject as before) will take the whole, so that all collaterals will be ousted. If the father be not living, the mother, brothers, and sisters will take in equal shares: if some of the brothers or sisters have died, their children will take the shares *per stirpes*, and if there be no brother or sister, or brother's or sister's child, the mother will take the whole. If there be neither mother, brother, sister, nor brother's or sister's child, the whole goes to the nearest living relations, to the exclusion of all others, and

is divided among them equally, or, as it is sometimes expressed, *per capita* and not *per stirpes*. The descent of personal property differs further from that of land, in that the right of primogeniture, and the preference of the male to the female sex, the whole blood to the half blood, and the paternal to the maternal side, do not exist; and it will be remembered that if the deceased be a married woman her husband will be entitled to the whole, so that none of her relations will get anything.

The reader will perceive from what has already been said that the difference between the rules as to the distribution of property in England and those which prevail in Moham-medan countries is very great,* but the details are rather intricate, and a few definite instances will perhaps give a more intelligible idea of the practical results than any amount of abstract description. I propose to begin with a very simple example, and to work up gradually to cases of some little complication; so that the reader, with the help of occasional reference to previous explanations, will have no difficulty in following out the arithmetical details.

1. Suppose the deceased to have left two sons, five daughters, three brothers' sons, and one maternal aunt.

Here the brothers' sons are excluded by the sons, as the latter belong to an earlier class of residuaries; the maternal aunt, being a distant kinswoman, can take nothing

* It is singular how slow we are to adopt legal improvements of a radical character in England proper. The Anglo-Indian Government, more prompt to assimilate that which is good and sensible in other systems, abolished curtesy, dower, primogeniture, and marital rights, nearly thirty years ago, by a few short sentences in one of its Acts. At the same time, with commendable discrimination, it refrained from adopting that which seems one-sided and illiberal in Moham-medan Family Law; in other words, it placed the sexes on a perfectly equal footing in respect of inheritance, whether resulting from relationship or from marriage. One feels tempted sometimes to wish for a Governor-General and Council at home, instead of a representative assembly. Absolutism puts an iron finger on the blot and expunges it, while Constitutionalism shoots grouse, makes jokes, wrangles, and potters!

in the presence of sharers and residuaries ; the daughters, primarily sharers, become residuaries, each taking half as much as each son. The estate must, therefore, be divided, into nine parts, of which each son will take two, and each daughter one.

In England, supposing that anything had been left undisposed of by will,* the eldest son would take all the land, and the sons and daughters would take the personal property equally among them without distinction of sex.

2. The deceased has left his father, his mother, five daughters, and two brothers.

Here there are several descriptions of sharers, who are respectively entitled as follows:—Father, $\frac{1}{2}$; mother, $\frac{1}{3}$; daughters, $\frac{2}{9}$; or, $\frac{1}{3}$ each. The brothers, being residuaries, will get nothing, as the shares exhaust the whole ; but, in any case, brothers would be excluded by the father.

In England, the daughters would take the whole property, real and personal, equally among them, so that the father and mother, as well as the brothers, would be precluded from inheriting.

3. Wife, true grandmother, three daughters, and four paternal or consanguine paternal uncles.

The wife's share is $\frac{1}{2}$; the true grandmother's, $\frac{1}{3}$; the daughters take $\frac{1}{9}$, or $\frac{2}{9}$ each ; the uncles, as residuaries, will divide the remaining $\frac{1}{3}$ among them, so as to have $\frac{1}{9}$ each.

In England, the land, subject to the wife's life estate of dower (if not barred by the husband) would go to the daughters equally, while the personal property would go, one-third to the wife, and the remaining two-thirds to the daughters equally.

4. Let us next suppose the deceased to be a woman, who, having had a child or children who died before, her,

* In order to avoid tedious repetition, I will ask the reader to supply these words for himself in the remaining examples, except where the deceased is represented as having been a married woman.

has left a husband, two sisters, two uterine sisters, and her mother.

Here the husband, as there are no children, is primarily entitled to $\frac{1}{2}$ or $\frac{3}{4}$; the share of the two sisters is $\frac{1}{4}$ or $\frac{1}{8}$; that of the uterine sisters, $\frac{1}{4}$ or $\frac{3}{8}$; that of the mother, $\frac{1}{4}$. But it is clear that these fractions, when added together, will amount to $\frac{10}{8}$, or more than the whole, and that the shares must be made to abate in proportion by increasing the common denominator from 6 to 10. Hence the husband will have $\frac{5}{10}$; the two sisters, $\frac{2}{10}$, or $\frac{1}{5}$ each; the two uterine sisters, $\frac{3}{10}$, or $\frac{3}{10}$ each; and the mother, $\frac{1}{10}$.

In England, the husband would have the land for his life, and after his decease the two sisters would succeed equally, to the exclusion of the uterine sisters and mother. The personal property would go entirely to the husband, to the exclusion of all the relations here mentioned.

5. Lastly, let us suppose a deceased man to have left a wife, a paternal uncle's son's son, a daughter's son, and a daughter's daughter.

Here the wife will have her larger share, $\frac{2}{3}$; and the paternal uncle's son's son, as sole residuary, will have all the rest; while the daughter's son and daughter's daughter, being distant kindred, can take nothing.

In England, subject to the wife's dower (if any) out of the land, and to her right to a third of the personal property, the land would go to the daughter's son if he and the daughter's daughter were brother and sister, but equally between them if they were children of different daughters; the personal property would go equally between them in either case; the paternal uncle's son's son would get nothing.

I have framed the last example for the express purpose of showing, in fairness, what I cannot but look upon as a defect in the Mohammedan family system, namely, the sweeping postponement of distant kindred to sharers and

residuaries, which may thus deprive near relations, and even actual descendants, of all right of inheritance, in favour of persons really much more remote. The English law, so far as regards the absence of such a rule, contrasts favourably with the Mohammedan ; and it is also a point in favour of our own law that it gives equal rights, generally, to persons equal in degree who inherit together while the Mohammedan law generally, gives a double share to the male. It may be admitted, also, that our own law is more just than the Mohammedan in permitting sons' sons, and many other relations, to represent their parents, though it is inconsistent in giving this rule only a restricted application among collaterals.

But if, apart from the three points just mentioned, we compare the working of these widely different systems in some of their most important applications, we shall find, in many respects, a marked superiority, both as regards a sense of justice and in respect of intelligent manipulation of materials, on the side of the Arabian sages.

First, as to the property and rights of married women during life. With regard to this branch of law, we seem already to be more than half convinced of the justice of the Mohammedan doctrines: for, if Lord Selborne's Bill lately introduced into the House of Lords should be allowed to pass into law, we shall at length, in the nineteenth century, give in our adhesion to a rule of natural equality to which Islam, as far as I am aware, has never refused obedience. It would be satisfactory if this just and wise (though probably unconscious), imitation of Mohammedan law were to be followed by the adoption, in principle, of its rules as to *mihr*, or Mohammedan dower, in other words, by making a moderate statutory settlement on every married woman who has received no such provision from her husband.

Next as to maintenance of wife and relations. In respect of this portion of the subject the greater

enlightenment of the Mohammedan system appears so clear, the frank admissions of the able writer, above-mentioned as to the loose nature of our own law seems so conclusive, that the propriety of some change of the latter in the direction of the former must, I think, be universally admitted. It may, indeed, be an open question whether the wide scope assigned to the duty of maintenance by Mohammedan lawyers should be approved to its full extent, but it is beyond question that our own law requires both defining and enlarging, so that, to some extent, at least, the example of Islam may certainly prove useful. Again, the rule that every person is primarily maintainable out of his own property is just towards parents and other persons on whom the obligation may fall, while that which provides for the safe custody and return of surplus earnings is equally just towards the child. Neither of these rules appears to exist in our own country, and both might be adopted with advantage.

With regard to inheritance, generally; apart from the two important facts that there is no "curtesy" to stop the land on its way, and no "husband's right of administration" to absorb what may be left of a deceased wife's personal property, there are three leading principles among those mentioned and illustrated above which call for special attention. These are, the limitation, in the interests of all inheritors, of the power of testamentary disposition; the rule or set of rules which prevents certain inheritors, namely, a parent, a child, and a wife, from being deprived of a substantial portion under any circumstances; and the absence of distinction between real and personal property.

As to the first of these characteristic features, it may be observed that the right of testamentary disposition is one of purely mundane and conventional origin. The living community is bound by no law of duty or necessity to carry out the wishes of the deceased individual, and the power of

prospectively guiding the devolution of property after death is only conceded from motives of policy and general convenience. There is nothing, therefore, to prevent society, which confers the right, from guarding the exercise of it by any restrictive conditions that it may think conducive to the public advantage, and among these there are two which we might expect to find in any system prepared with due thought and intelligence, namely, that a man shall not be able to leave his nearest relations destitute, and that he shall not be able to enrich one or more by the ruin of the rest. The Mohammedan law is clearly in advance of our own in its recognition of these reasonable principles; and although it may be an open question what the exact limits of testamentary disposition ought to be, there can be little doubt that an unlimited indulgence to the whims of testators is a blot upon our legal system.

As to the indefeasible rights of particular relations, I need scarcely point out that no man can fairly claim a right to charge himself voluntarily with a wife and children, and to leave them, at his death, to be supported by the public. With regard to parents, it is an elementary law of nature—or, at least, of human nature—that a man owes something to his father and mother for their care of him when young and helpless, and it is a thing much to be desired that the principle of filial obligation, which occupies a very important place in our religious and moral theories, should receive some practical recognition in the modification of our laws of inheritance.

The question of assimilating the laws of real and personal property with reference to their respective devolution is one which has long claimed the attention of those who desire the improvement of English law. It is not likely that I can add anything of value to the *à priori* arguments on this subject which have been urged already by abler men,

but I can point to the practical example of the Moham-
medan races, and to the inference to be drawn from their
acquiescence in such an assimilation during fifteen centuries,
namely, that the same principle might be adopted by our-
selves without the practical inconvenience anticipated by
those who oppose such a change.

The three special points which I have thus endeavoured to
deal with are of a simple though comprehensive character;
the consideration of the merits or demerits of the great
body of the rules of distribution involves questions of a
more complicated nature, which can only be slightly touched
upon here. These rules, as we have seen, are of a refined
and highly artificial construction, and it is probable that
no European race or community would be willing to adopt
them as their own altogether without reservation; never-
theless it must be admitted, I think, by all who consider
them carefully, that they afford much ground for reflection,
and in some, at least, of their leading points, for sincere
admiration. When it is remembered how infinitely various
may be the circumstances of a man's death with reference to
the number and degree of the relations whom he may leave
behind him, the Mohammedan method of specific shares
must be considered a just and beneficent institution, since
it gives a moderate provision to many persons who, under a
law of primogeniture, or even a division among "next-of-
kin," would be left entirely destitute. We have seen that
the disturbing effect which an inflexible allotment of shares
might occasion is obviated by the extraordinary mallea-
bility of the system; no less than nine out of twelve sharers
having alternative shares, while four may be residuaries
instead of sharers, two may be residuaries as well as sharers,
seven are liable to exclusion, ten may gain something by the
"return," and all may lose something by the "increase."
Thus it is often found, in the combinations which occur
in practice, that a considerable number of individuals or

sets may succeed, while in similar combinations in our own country the whole would go to one such individual or set. Some instances of this difference have been shown by examples, and most of the practical instances of Mohammedan inheritance would serve to illustrate it more or less. By this comparatively wide distribution the number of individuals deriving immediate advantage is increased, and the community is indirectly benefited by the diminution of the number of persons thrown upon it for support. It will, perhaps, be urged as an objection that the Mohammedan division of property is too liberal. If it be so (which I doubt very much) it may at least be answered without hesitation that our own is too restricted. On this part of the subject, therefore, without maintaining that the machinery of sharers and residuaries, intelligent and exquisitely adjusted as it is, ought to be imposed in its entirety on our own or any other country, I feel convinced that the welding of many portions of it into our own family system would be of public and private advantage, and that the whole, perfect and unaltered as it left the hands of the masters, is calculated to afford to our seminaries a new and unique field of study of very special beauty and importance.

In putting together the above remarks, which I venture to press especially on the attention of those (and they are not few) who think the Family Laws of England susceptible of improvement, I have endeavoured to steer clear of two opposite dangers. My Scylla has been the fear of writing too strongly in favour of a remarkable and hitherto much neglected system, my Charybdis, the risk of appearing to play the rôle of an apologist where no apology can possibly be required. On the one hand I feared to scare away those who would rather face a charge of cavalry than a man with a "craze," on the other, I was loth to seem to ask favour for a subject which is abundantly capable of standing on its own merits. I trust that I have succeeded in avoiding both

of these extremes. I must admit that I dreaded the latter less than the former, for one who is thoroughly convinced of the excellence of his theme is not in very serious danger of writing about it in too humble a tone. There was more risk, I felt, that I might appear to claim for it such admiration as perfection alone should command, forgetting that it is not in the nature of human work to be entirely free from fault or blemish. To avoid this error I have made it my duty to seek and point out, side by side with the merits of the system, anything that might seem to savour of harshness or inequality; and I believe that, although much addicted to contemplate the Mohammadan law in its most favourable aspects, I shall be found to have dealt with it impartially. While, however, I have been thus anxious not to be, or even to appear, *fautor ineptè*, I have borne in mind my preliminary thesis, that the Family Laws of Islam may be studied and imitated with advantage in our own country, and I trust that, whatever faults of detail I may have unconsciously committed, I shall be deemed to have proved my case.

ALMARIC RUMSEY.

II.—EVIDENCE OF FOREIGN LAWS.

A CASE has lately been decided by the Landgericht, or Superior Court of the Grand Duchy of Baden, which presents several features of International interest, and especially concerns the numerous class of British subjects who may, without prejudice to their *animus revertendi*, be described as living abroad.

In 1860, X., an Englishman, married a German lady in Germany. The marriage was duly solemnized at the British Embassy. The lady was neither possessed of nor inherited any property, and no settlement was made either before or after the marriage. In 1865, X. purchased a freehold at Y., within the Grand Duchy of Baden, and commenced to build a house on it. The purchase was registered at the official Registry of Titles, an excellent German institution, which registers the sale of all realty; thus the Municipality become in practice the keepers of every one's title to land, and thereby imperfect titles are entirely obviated. However, this system has its drawbacks, as will be noticed presently. In 1876 the wife of X. died, leaving several children issue of the marriage. The authorities of the Grand Duchy regarded X. and his family as aliens, and therefore on the death of the wife took no steps to assure themselves concerning his property, or concerning the tutelage of the children. No question of domicile was raised; we may, therefore, assume for all purposes, that X. was merely a sojourner, or temporary dweller, in the Grand Duchy. X. subsequently married again.

In 1880 X. sought to raise some money by mortgage on his freehold, but found that he could not do so on

account of the following entry having been made, by the Pfandrichter,* or Registrar, in the Register of Titles, viz. :—

“ Since the purchase of the land to be mortgaged, the first wife of the (would be) mortgagor has died, leaving children who are minors. The Registrar does not know what property, priority and mortgage-rights the minors may have, according to the laws of their own country. Therefore, the mortgage can only be effected subject to the rights and claims of the minors. The Registrar therefore refuses to be responsible to the mortgagee.”

Thereupon X. wrote to England, and having fortified himself by obtaining the written opinion of an Equity barrister, to the effect that the minors had no rights according to English law, complained to the Amtsgericht or judges of the Inferior Court. The Registrar who had raised the question, did not profess to know anything about the English law, but was uneasy under the influence of the unknown. He justified his views, however, by asserting that, as the case then stood, in the absence of a marriage settlement, and until the contrary should be proved either by English officials or by a decision of the Baden Courts, the minors were entitled to half the freehold. X., on the other hand, triumphantly produced the counsel's opinion, pointing out that it clearly supported what he had previously explained, and that the law was so obvious that the question would never have been raised in England. The Judges and the Registrar all looked at the opinion. They were horrified at its being without a seal. How could a man, who is not a Government official, dare to give an opinion? It was monstrous! They became obdurate, and remained horrified at the idea of a private individual thinking himself competent to give an opinion, which should in any way bind the very smallest German official. The complaint was dismissed, and X. was ordered to pay the costs “as his complaint was groundless.” The Court, holding that the children of a

foreigner have no rights, by virtue of the Baden law, to the realty of their father situate in the Grand Duchy, observed that it was not authoritatively shown to the Court what were the children's rights according to the law of their own country.

From this decision X. appealed to the Landgericht, or superior Court, consisting of five Judges. These Judges eventually decided that according to the law of England the minors had no rights to the realty. Their decision (the latter portion of which suggests an idea hitherto unknown to English Jurisprudence) was conceived in the following terms :—

“The Landgericht decides that the following paragraphs are proved beyond a doubt, viz.:—The children of X. have not inherited any rights from their mother, who brought no property into the marriage. The mother had herself no claims on the property bought by the father during marriage, and consequently, as she had herself no claims, the children cannot deduce any claims through her. The law does not give the children any mortgage claims on their father's property, and as such claims are not known to English law, minors are protected by trustees, or by the Court of Chancery.”

The decision of the Superior Court of Baden, in the case before it, was *substantially* correct so far as the English law is concerned. But what if had not been so? X. would in such case have been unable to mortgage his property, and with the adverse note against it in the Registrar's books, would have been unable to sell it. It will be noticed that the main difficulty that X. was under, all through this tedious transaction, was the difficulty of producing to the German authorities *an authoritative declaration of some English official*, capable of pronouncing on the question of law. The opinion of a mere conveyancing counsel was scouted as being unofficial; the British Chargé d'Affaires stated that he was unable to make an official declaration of what was the English law; and an English County Court Judge,

on the request being made to him, very properly declined to do so.*

This difficulty was some years ago recognised by our Legislature. The Act 24 & 25 Vict., c. 11, passed in 1861, for the better ascertainment of the law of any foreign country or State, with the Government of which Her Majesty may be pleased to enter into a Convention, enacts (section three) as follows :—

“ If in any action depending in any Court of a foreign country or State with whose Government Her Majesty shall have entered into a convention as above set forth, (*i.e.*, for the purpose of mutually ascertaining the law,) such Court shall deem it expedient to ascertain the law applicable to the facts of the case as administered in any part of Her Majesty's dominions, and if the foreign Court in which such action may depend shall remit to the Court in Her Majesty's dominions whose opinion is desired, a case setting forth the facts and the questions of law arising out of the same, on which they desire to have the opinion of a Court within Her Majesty's dominions, it shall be competent to any of the parties to the action to present a petition to such last-mentioned Court, whose opinion is to be obtained, praying such Court to hear parties or their counsel, and to pronounce their opinion thereon in terms of this Act, or to pronounce their opinion without hearing parties or counsel; and the Court to which such petition shall be presented shall consider the same, and if they think fit, shall appoint an early day for hearing parties or their counsel on such case, and shall pronounce their opinion upon the questions of law as administered by them which are submitted to them by the foreign Court; and in order to their pronouncing such opinion they shall be entitled to take such further procedure thereupon as to them shall seem proper, and upon such opinion being pronounced a copy thereof, certified by an officer of such Court, shall be given to each of the parties to the action by whom the same shall be required.”

It is much to be regretted that no Convention has up to the present date been entered into by this country with any

* X. produced a copy of Blackstone to the Landgericht, and the author of the present article having been consulted, offered some suggestions, which in the end prevailed.

foreign Government; and this useful Act of Parliament therefore remains, like so many other statutes, a dead letter. It is almost incredible that at the present day, with the boundless facilities for foreign travel at command, and the vast network of commercial transactions of our mercantile community rendering more and more frequent the occasions when our Courts of Justice are called upon to seek for an accurate knowledge of foreign laws, this most valuable and indeed necessary Act should be permitted to remain inoperative.

Why is this state of things suffered at all, and how much longer is it to be allowed to last?

In the absence of any International convention or agreement, it becomes necessary to consider what evidence of the law of a foreign State is sufficient in order that it should be received. In this country, the rule appears to have been more lax in the Courts governed by the civil law than in the common law Courts, and even the latter did not always concur. A copy of the foreign law if proved to be such, is sufficient to prove the existence of the bare law, although a professional witness may be required to interpret it.

Of late years the oral evidence of an expert (*i.e.*, a witness who in the opinion of the Court is competent to prove a foreign law, from having had peculiar means of becoming acquainted with it) has been held admissible, without the production of a copy of the foreign law.

In 1802, Lord Stowell accepted as evidence extracts from the Council of Trent, referred to by advocates practising at the Hague, and copied into their opinions, on the ground that the extracts were authenticated, and that there was every reason to believe that such ordinances were, at the time in question, valid and in force. (*Middleton v. Janvèrin*, 2 Hagg. Consist. R., 437.)

In 1803, in an action in the King's Bench, an opinion was read showing the proper interpretation of a particular

Russian law ; this opinion was signed by the three presiding judges of the Custom House Court of St. Petersburg, and was sealed with the seal of that Court. But the Court did not find it necessary to decide the case on the question-governed by the opinion, and declined to say whether it was admissible or not. (*Bohtlingk v. Inglis*, 3 East, 381.)

In 1806, in the proceedings before the Court of King's Bench at Westminster, against Thomas Picton, Governor and Commander-in-Chief of Trinidad, on an indictment for causing torture to be inflicted on a free Mulatto woman, Lord Ellenborough is reported to have said, "to prove the written law of any nation, a copy of that law should be produced. If I were sitting at Guildhall, and proof of foreign commercial regulations were necessary, I should require an authenticated copy of those regulations. . . . The text-writers furnish us with their statement of the law, and that would certainly be good evidence upon the same principle which renders histories admissible. There is a case in which the history of the Turkish Empire by Cantemir was received by the House of Lords, and received after some discussion ; I shall therefore receive any book that purports to be a history of the common law of Spain." (*Re Picton*, 30 How. State Trials, 491.)

In 1812, it being stated to the same learned judge that at Surinam all agreements must be stamped to be of any validity, and that there was a written law of the colony to that effect, he thought it quite possible that the colonial law might not be without some exceptions, like our own Stamp Act, and required an *authenticated copy* of the law to be produced. (*Clegg v. Levy*, 3 Camp., 166.)

In 1815, Chief Justice Gibbs, sitting at the Guildhall, held that foreign laws, not written, are to be proved by the parol examination of witnesses of competent skill, but that where they are in writing, a copy, properly authenticated, must be produced. (*Millar v. Heinrick*, 4 Camp., 155.)

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In 1834, Chief Justice Tindal directed the circumstances of an action in the Common Pleas to be set forth in a special case, and to contain any opinions of French advocates which had been taken on either side up to that period. (*Trimbey v. Viguier*, 1 Bing. N.C., 153.)

In the Sussex Peerage Case (1844), it was objected that the late Cardinal Wiseman, then Dr. Wiseman, holding the office of co-adjutor to a Vicar Apostolic in this country, was not admissible as a witness to prove the Canon Law with respect to marriage administered by Ecclesiastical Courts in Rome; for it was necessary that he should have some peculiar means of knowledge, as for instance from his office. But the Committee of the House of Lords determined that he did come within the description of a person *peritus virtute officii*, for he was engaged in the performance of responsible public duties, and in order to discharge them properly, was bound to make himself acquainted with the subject of the law of marriage. (11 Cl. & Fin., 133.)

In 1845, the Court of Queen's Bench permitted a French Advocate, practising at Strasburg, to give evidence that the feudal law had been put an end to in Alsace *de facto* by the French Revolution in 1789, and *de jure* by the Treaty of Lunéville in 1801; and upon the said Advocate being asked whether there was not a decree to that effect, he added that there was such a decree of the National Assembly of the 4th of August, 1789, and that he had learned this in the course of his legal studies, it being part of the history of the law which he learned while studying for the Bar. It was objected that this evidence was inadmissible, on the ground that it was not offered as secondary evidence admissible on account of any difficulty in procuring primary evidence, but as the primary evidence itself, and that it was as if the original decree were shown to be in Court, and yet oral evidence were offered. The evidence was, however, held admissible by Lord Chief Justice Denman and Justices

Williams and Coleridge, on the ground that the opinions of persons of science must be received as to the facts of their science, and that this rule applies to the evidence of legal men, and is not confined to the unwritten law, but extends also to the written laws which such men are bound to know. Properly speaking, the nature of such evidence is not to set forth the contents of the written law, but its effects and the state of law resulting from it. The mere contents, indeed, might often mislead persons not familiar with the particular system of law; but the witness in such cases is called upon to state what law results from the instrument referred to. This rule does not apply to the case of a Treaty, for no class of persons are so peculiarly conversant with the subject matter as to invest it with the character of a science. (*Baron de Bode's case*, 8 Q.B., 208.)

In 1849 the Court of Common Pleas admitted a native of Belgium to give evidence of the law of Belgium with respect to bills and notes. He had formerly carried on the business of a merchant and commission agent in stocks and bills of exchange at Brussels, but was then an hotel keeper in London. He stated that he was well acquainted with the Belgian law on the above subject. The Superior Court, consisting of Justices Maule, Cresswell, Williams, and Talfourd confirmed the admissibility of this evidence, on the ground that he was a person having special and peculiar means of knowledge of the law of Belgium with regard to bills and notes, one whose business it was to attend to and make himself acquainted with the subject, and that inasmuch as he had been carrying on a business which made it his interest to take cognisance of the foreign law, he fell within the description of an *expert*. Applying common sense to the matter, why should not persons who may be reasonably supposed to be acquainted with a subject, though they have not filled any official appointment such as judge or advocate, be deemed competent to speak

upon it? Persons who have *practised* as physicians are frequently examined, and no inquiry is ever made as to whether or not they have a regular diploma. All persons who practice a business or profession which requires them to possess a certain knowledge of the matter in hand are experts so far as expertness is required. Foreign law is a matter of fact; *any person who can satisfy the Court* that he has had the means of knowing it is an admissible witness to prove it. (*Vander Donckt v. Thellusson*, 8 C.B., 826.) But in 1850, in the case of *Bristow v. Sequeville* (5 EXCH., 275), Baron Alderson, sitting at Nisi Prius, doubted whether the law of Prussia was sufficiently proved by a witness who stated that he was a jurisconsult and adviser to the Russian consul in England, that he knew the Code Napoléon was in force at Cologne, and that by that Code certain receipts would be inadmissible in foreign courts, because unstamped; the witness also stated that he had studied law at the University of Leipzig, and from his studies there was able to speak as to the Code Napoléon being the law of Cologne. On a motion for a new trial, Chief Baron Pollock, and Barons Platt, Alderson and Rolfe, threw doubts on the relevancy of such evidence; the rule, however, was refused on another ground. This case is to be distinguished from the two last foregoing cases, in this, that the Court doubted the competency of the individual, but it does not shake the now generally received opinion, that the oral evidence of a trustworthy *expert* is always admissible to prove a foreign law.

In 1862, a certificate of the Ambassador from the King of Hanover, under the seal of the Legation, declaring the Hanoverian law on a question concerning testaments, was admitted in the Probate Court (*Re Klingemann*, 32 L.J. (N.S.), P.M.A., 16), and in an earlier case in the Ecclesiastical Court, the certificate of the French Consul General was

deemed sufficient evidence of the law of France. (*Re Dormoy*, 3 Hagg. Eccl., 767.)

The Courts of the United States generally require authenticated copies of foreign laws to be produced when they can be procured. Foreign unwritten laws and customs are proved by parol evidence, and when such evidence is objected to on the ground that the law in question is a written law, the party objecting must show the fact (15 Serg. & R., 87). Proof of such unwritten laws is usually made by the testimony of witnesses learned in the law, and competent to state it correctly on oath (2 Cranch, 237 ; 15 Serg. & R., 84). By the Constitution of the United States (Art. 4, s. 1.) "full faith and credit shall be given in each State to the public Acts of every other State" of the Union ; and these Acts are authenticated by having the seal of the respective State affixed thereto.

The public seal of a foreign sovereign, or foreign State, affixed to a writing purporting to be a written law or edict, is of itself the highest evidence ; although further proof of the seal of a foreign court is required. Courts of Admiralty, however, are Courts under the Law of Nations, and their seals are always admitted without further evidence.

The reported cases which we have considered in the earlier part of this article, form a curious exception to the rule of law, that witnesses are to inform the tribunals of facts, and not of their opinions. But *cessante ratione legis cessat ipsa lex*. When circumstances rebut the presumption that a tribunal is as capable of forming a judgment on the facts as a witness, the rule gives way, and competent witnesses are permitted to give their opinions in evidence on questions of science, skill, trade, and the like, as well as on questions of Foreign Law.

SHERSTON BAKER.

III.—SUZERAINTY: MEDIÆVAL AND MODERN.

EVENTS which have taken place within the last year bearing directly or indirectly on the international relations between most of the leading European Powers and countries so widely distinct in race, civilization, and laws as the Transvaal in South Africa, Tunis and Egypt in North Africa, Tonquin in Assam, and Borneo in Malaysia, have rendered the subject of Suzerain and Vassal States of considerable interest not to those nations alone, but to the world in general.

Notwithstanding the importance of the subject, it appears to have been treated only in a superficial manner by the writers on International Law; it is proposed, therefore, as far as the limits of space will allow, to discuss the meaning of the words Suzerain and Vassal as applied to States and as defining their relative positions, the one to the other and each to the world in general. In other words: to determine what are the rights and duties of a Suzerain Power and its Vassal State?

That a considerable difference of opinion exists in the minds of eminent Statesmen and Lawyers as to the meaning of suzerainty has latterly become only too apparent. In the discussion in the House of Lords that immediately followed the announcement of the terms of the Convention for the settlement of the Transvaal territory, the present Lord Chancellor, Lord Selborne, is reported to have said that "Suzerainty means that the "Suzerain is lord paramount of the people who are subject "to it. . . . The control of foreign and Frontier relations essentially distinguishes a paramount Power. No "war can be made upon adjoining Native tribes, no treaty "can be made with (foreign) Powers except by the authority

"of (the suzerain) country,"* inferring that the vassal State had full control over its internal affairs, but over those alone. The Earl of Kimberley also† intimated that the word expressed the assignment to the Vassal State of "independent power as regards its internal Government," and that that alone was to be exercised by it. The late Lord Chancellor, Earl Cairns, on the other hand, after quoting Sir Evelyn Wood's definition of the word Suzerainty, "That the country is to have entire self-government as regards its own interior affairs; but that it cannot take action against or with an outside Power without permission of the Suzerain," expressed his opinion that the reservation of the foreign relations did not express the real meaning of the word, for if it were so, the Sovereign of Great Britain would be Suzerain of Afghanistan according to the arrangement with Abdurrahman.‡ The Marquis of Salisbury at the same time stated that suzerainty did not preclude interference in internal affairs.§ Where the opinions of men, each so fully entitled either from their recognized knowledge of law or from their admitted political experience, to enunciate them authoritatively, are so widely divergent, it is evident that the subject is at least worthy of a careful investigation.

In the discussion arising out of the deliberation on the same subject in the House of Commons a few days before, it was laid down by the Prime Minister, Mr. Gladstone, that suzerainty though quite distinct from sovereignty had marked relations to it.|| If by this is meant that a suzerain Power is so far distinct from a sovereign Power that it cannot have all the rights of sovereignty in respect to its vassal State, or on the contrary has such marked relations

* Hansard's Parliamentary Debates, Vol. 260, p. 309 (March 31st, 1881).

† Ibid., p. 289.

‡ Ibid., p. 269.

§ Ibid., p. 317.

|| Hansard's Parliamentary Debates, Vol. 259, p. 1660. (March 22nd, 1881.)

to sovereignty that the vassal State cannot possess any sovereign rights, or again that the distinction and relationship are such that each must have some, neither can have all, the rights of a sovereign State, it will be submitted that it is an incorrect definition; if, on the other hand, what is meant is only that a suzerain Power can have some or all such rights, the statement may be allowed to be a correct, though by reason of its incompleteness it is not a particularly satisfactory explanation.

If the cases of only a few of the States which are or have recently been subject to suzerainty be considered, such as, for instance, the Transvaal to Great Britain, Roumania* or Greece† to the Ottoman Porte, it will be at once apparent that the rights of vassal States and consequently the reciprocal duties‡ are not in all instances identical, but that they are capable of at least some modification by agreement or otherwise. From this it is apparent that an absolute answer cannot be given to the question in the form put. It is proposed, therefore, to consider the rights consequent upon the status of suzerainty and vassalage where or in so far as they are not modified by any special terms, and then to discuss to what extent they can be varied without the vassal State being on the one hand entirely merged in its suzerain Power or on the other becoming itself free and independent of all control at its hands. It may be assumed that the rights (irrespective of certain conditions specially engendered by the particular mutual relationship) possessed by the Suzerain and the Vassal, one

* Before the Treaty of Berlin, which describes Roumania and Servia as "autrefois vassales" of the Porte.

† Before 1830.

‡ Twiss, *International Law, Peace*, sec. 15. Heffter, *Le Droit International Public*, (traduit par Dr. Bergson,) sec. 22, iii. Dans la vie civile tout droit suppose la notion corrélatrice d'un devoir. Ce qui est philosophiquement vrai pour les individus l'est aussi pour les nations, ces grandes agglomérations sociales.—Calvo, *Le Droit International*, sec. 346.

or the other, or both in some proportion, as the case may be, are the rights which, if exercised by a single sovereign State, are called the Rights of sovereignty. By these rights is meant all the rights which a sovereignty possesses, not those alone which can *only* be exercised by a Sovereign power. Now these Rights of sovereignty are fairly agreed upon by the authorities on International Law, though their classification of them may somewhat vary; if then it can be determined in the particular case, which State, the suzerain, or the vassal, exercises them, or in what proportion each exercises them, the more difficult part of the question under consideration will be answered.

The distinguishing attributes of sovereignty may be said to be Independence* or Freedom, and Equality;† and, consequent on the possession of these fundamental attributes, sovereign States may be said to be privileged to exercise certain rights which may be divided into two classes, internal, sometimes termed constitutional, and external, or international, rights.

The internal rights are the right to determine and organise the Constitution;‡ the right to maintain order, sometimes called the right of police;§ the right of property or domain,

* Vattel, *Law of Nations* Prelim., secs. 15 and 21. Klüber, *Droit des Gens Moderne de l'Europe*, traduit par M. Ott, ch. I., secs. 21, 37, 45. Twiss, *Law of Nations*, Peace, sec. 9. Woolsey, *International Law*, sec. 37. Heffter, *Le Droit International Public*, sec. 26. Phillimore, *International Law*, vol. I., art. cxliv. Théodore Ortolan, *Règles Internationales et Diplomatie de la Mer*, ch. III., p. 56. Bluntschli, *Das Moderne Völkerrecht*, art. 64. Manning, *Law of Nations*, p. 92. Halleck, *International Law*, I., ch. iv., sec. 1. Calvo, sec. 104, and others.

† Vattel, Prelim., secs. 18 and 21. Lib. ii., sec. 36. Klüber, sec. 89. Woolsey, secs. 37, 51. Twiss, sec. 12. Heffter, sec. 27. Phillimore, vol. I., art. cxliv. Th. Ortolan, ch. III., p. 57. Bluntschli, art. 81. Halleck, I., ch. v., sec. 1. Calvo, secs. 296-343, and others.

‡ Vattel I., secs. 31-33. Klüber, ch. I., sec. 22. Bluntschli, art. 68. Phillimore, vol. I., arts. cxlv., cxlviii. Manning, p. 93. Halleck, II., ch. iv., sec. 2. Calvo, sec. 105, &c.

§ Vattel I., sec. 174.

so far, at all events, as it relates to the possession of territory (*jura possessionis*);* the right of legislation;† of plenary and criminal jurisdiction,‡ in which may be included the right of remission and pardon;§ the right of appointing magistrates;|| of coining money; levying taxes; regulating ranks, and such like.

The international rights are the rights of legation or embassy;¶ the right to negotiate and conclude treaties and alliances;** the right of war, neutrality, and peace;†† and the right of domain—that is, of acquiring (*jus possidendi*), and alienating property;§§ all the rights, in fact, which concern relations with other States.

As already pointed out, vassal States are not all alike entitled to the same rights and subject to the same duties; it is proposed therefore to divide them into two classes, which it will appear is a natural and not a mere arbitrary division, namely, those subject to vassalage not modified by

* Vattel I., sec. 203. Twiss, sec. 139. Heffter, sec. 29. Phillimore, Vol. I., arts. cxlv., cl., &c. Manning, p. 93. Calvo, Livre IV.

† Loyseau, *Traité des Seigneuries* III., 4. Réal, *La Science du Gouvernement*, IV., p. 121. Twiss, sec. 150. Bluntschli, art. 68. Halleck, I., ch. iv., sec. 14. Calvo, sec. 734. Loyseau, indeed, considers that the right to make laws comprehends “tous les autres cas de souveraineté,” III., 9.

‡ Loyseau, III., 4, 28. Réal, IV., p. 121. Twiss, sec. 150. Phillimore, vol. I., art. cccxvii. Manning, p. 93. Halleck, I., ch. iv., sec. 15. Calvo, II., 227.

§ Loyseau, III., 4. Vattel, I., sec. 173.

|| “Qui sont les loys vives et parlantes.” Loyseau, III., 17.

¶ De Wicquefort, *The Ambassador and his Functions*, Digby's translation, p. 6. Bynkershoek, *Quæstionum Juris Publici*, lib. II., c. 3. Vattel, II., sec. 154; IV., sec. 57. Twiss, sec. 184. Bluntschli, art. 68. Phillimore, vol. II., art. cxv., cxvi. Halleck, I., ch. viii., sec. 1. Calvo, sec. 400.

** Vattel, II., sec. 154. Klüber, secs. 36, 141-230. Phillimore, vol. I., art. cxlvii.; vol. II., xlv. Halleck, I., ch. viii., sec. 1, &c. Calvo, sec. 680.

†† Loyseau, III., 4, 25, 27. Réal, IV., 121. Vattel, III., sec. 4. Klüber, secs. 36, 231-329. Twiss, *Law of Nations, War*, secs. 1-3. Creasy, *First Platform of International Law*, p. 95.

§§ Vattel, I., sec. 203. Klüber, secs 123-140. Twiss, sec. 105, &c. Phillimore, vol. I., arts. cxlv., cccxii., &c. Manning, p. 93. Calvo, Tome I., Livre IV.

express terms,—to borrow a phrase from Hertius,* “nude vassalage”—and those subject to a more onerous vassalage, and to show the relations which each of these classes of vassalages and their suzerainties bear to sovereignty. First of all, then, can a State subject to nude vassalage be and is it entitled to all the rights of sovereignty—in other words, can it be and is it a purely sovereign State?

Grotius† writing “de nexu feudali,” says the obligation “nec regi aut populo jus demit summi imperii.”

De Wicquefort‡ refers to some princes who “possess their fiefs in full Sovereignty,” and who are “Sovereigns in effect,” and he quotes with approbation an answer of Hugh de Lionne to Pope Urban III., in which he referred to “vassals who by virtue of their first investiture received their fiefs with all the rights of Sovereignty.”§

Vattel|| speaks of sovereignties being given in fee and sovereigns voluntarily rendering themselves feudatories of others, limiting the circumstances in which sovereignty continues to exist in these words: “When the homage leaves independency and sovereign authority in the administration of the State, and only means certain duties to the lord of the fee, or even a mere honorary acknowledgment, it does not prevent the State or the feudatory prince being strictly sovereign.”

Klüber¶ says the simple relations of fiefs held of a foreign government, “ne préjudicient point à sa Souveraineté.”

Halleck** considers that States “subject to feudal dependence or Vassalage are still considered as sovereign unless their Sovereignty is destroyed by their relation to other States.”

Heffter writes “Une puissance ayant donné une Souveraineté en fief,” homage “ne porte aucun

* De Specialibus Rom. Germanici Imperii Rebus Publicis, II., sec. 33, not e 10.

† Lib. I., ch. 3; XXIII., 2.

‡ P. 16.

§ P. 25.

|| I., sec. 8.

¶ Sec. 22.

** Ch. III., sec. 7.

“préjudice aux droits territoriaux du vassal, ni à ses rapports avec les souverains étrangers;”* and Wheaton† quotes this passage with approval.

Creasy‡ is of opinion that “a State may profess feudal Vassalage to a foreigner” and yet not be “out of the pale of International Law.”

Phillimore considers that “States that stand in a feudal relation towards other States are nevertheless sometimes considered as independent sovereignties.”§

Calvo|| also says “La Souveraineté d'un État dans ses relations internationales n'est pas modifiée d'avantage . . . par une dépendance féodale,” which he there describes as “nominale,” and which would appear to refer to what is here described as unmodified vassalage.

Bluntschli¶ grants something in the nature of sovereignty to a vassal State, but defining it as one of which the sovereignty is derived from that of another State, he appears to deduce therefrom that it must therefore be subordinate and its independence restrained on the ground of international right. This general statement would, having regard to the attributes of sovereignty, Independence, and Equality, apparently mean that a vassal State could not be sovereign. If, however, the opinion of one recognised as so able an international lawyer may be criticised, it may be suggested that though his definition may be correct his deduction does not necessarily follow. It can hardly be maintained, for instance, that England when held by King John as a fief of the Roman See** was, from an

* Sec. 22, iii.

† *Commentaire sur les éléments du Droit International*, Part I., ch. ii., iv.

‡ *First Platform of Int. Law*, p. 95.

§ Vol. I., art. xcvi.

|| Sec. 43.

¶ Art. 76.

** Bodin, in his *Les Six Livres de la République*, Livre Premier, ch. IX., p. 165, asserts that he had seen the Bull of Pope Innocent III. constituting England and Ireland fiefs of the Papal See, and that by the terms therein laid down they were held in faith and homage at the charge of paying a tax and rent, annual and perpetual, a thousand marks sterling on St. Michael's Day, besides the St. Peter's Pence.

international point of view, subordinate and dependent, and not a Power exercising full sovereign rights, at all events in its relations with all Powers other than the Papal See, although in this instance the sovereignty was certainly regranted by the suzerain Power.*

A class of writers has hitherto intentionally not been quoted on this point; those of French nationality, who, dating from the sixteenth to the eighteenth centuries, write not so much on general International Law as on the science of government, and particularly treat of the feudal system of tenure. These writers, perhaps, might not be considered of so much authority if it were not that feudalism was of distinctly Frank growth,† and specially flourished among the Frank nations, and therefore, as suzerainty originated from the system of feudal tenure,‡ greater importance may fairly be attached to the opinions of these French writers on this subject than might otherwise be their due.

Bodin, in his *Six Livres de la Republique*,§ devotes to this question part of a chapter,|| under the heading "Du Prince tributaire ou feudataire & s'il est souverain." He seems to experience considerable difficulty in answering the question he therein raises, for, after saying, "Celuy est Absoluëment souverain, qui ne tient rien, apres Dieu, que de l'espec. S'il tient d'autrui, il n'est plus souverain,"¶ he points out the difficulty in these words: "Si donques ceux qui tiennent en foy & hommage ne sont pas souuerains il n'y aura quasi point de

* Immediately preceding the act of investiture John resigned his dominions into the hands of the Pope's Legate and received them back from him to hold as a fief of the Church. Vattel I., 154, citing Matthew Paris.

† Stubbs, *Const. History of England*, Vol. I., p. 251. Hertius, *De Feudis Oblatis*, sec. 2. Réal, IV., p. 140, says it was the Franks, when they established themselves in Gaul, who invented the usage of fiefs.

‡ "C'est l'établissement des Fiefs qui lui" (à la Suzeraineté) "a donné la naissance parmi presque toutes les Nations de l'Europe." Réal, IV., p. 139.

§ Published in 1593.

|| Livre Premier, ch. IX.

¶ Page 162.

“ Prince Souuerain. Et si nous accordons que ceux qui tiennent en foy & hommage . . . soyent sôuerains, il faudra confesser par mesme suite de raisons que le vassal et le seigneur, le maistre & le seruiteur sont égaux en grandeur, en puissance, en autorité.”[†] But he nevertheless comes to the conclusion that a feudatory rendering “homage simple” (*planum hominium*), which will be shown to correspond to the state of a vassal Power subject to nude vassalage, is not absolutely sovereign, as he is “homme d’autrui, c’est à dire serviteur.”[†]

Loyseau, in his work on Seignories,[‡] says: “C’est une grande question, si le Prince feudataire peut estre souverain;”[§] but he answers it by remarking that “Il est bien vray, que la protection le tribut et la feudalité rabaissent & diminuent le lustre de l’Estat souverain, qui sans doute n’est pas si pur, si souverain & si maiestatif (s’il faut ainsi dire) quand il est subiect à ces charges: mais le Prince qui le possède ne laisse pourtant d’estre souverain en effect,”^{||} and he dissents from and points out the inconvenience of Bodin’s definition of an absolute sovereign, remarking that by his account almost all the kingdoms of the world are feudatories either of the Holy See or of the German Empire, and that it is against common sense to hold that these kingdoms are not sovereign.[¶]

Réal,^{**} asserts that “La féodalité rabaisse l’Etat Souverain et entraîne avec soi de la dépendance dans certaines circonstances; Mais le Prince vassal non lige peut exercer tous les actes de Souveraineté, sans que le Prince à qui il doit l’hommage puisse y mettre obstacle ni par voie de ressort ni autrement, l’hommage que ces sortes de vassaux sont obligés de rendre & la

* Page 162.

† Page 171.

‡ *Traité des Seigneuries*, published in 1610.

§ Ch. II., 42.

|| Ch. II., 45.

¶ Ch. II., 46, 48.

** *La Science du Gouvernement*, published in 1765.

“ redevance qu'ils peuvent être tenus de payer aux termes
 “ de la première investiture, diminuent la splendeur de la
 “ souveraineté, sans mettre d'obstacle à l'exercice de ces
 “ droits dans toute leur plénitude.”* And, again, he asserts,
 “ Les Souverains, pour être vassaux d'autres Souverains,
 “ ne cessent pas d'être Souverains eux-mêmes. La
 “ féodalité . . . n'empêche point par elle-même,
 “ l'exercice des droits de la Souveraineté.”†

It would seem, therefore, that both the writers on General International Law, and those who have more particularly considered the subject of national seignory, are practically unanimous in affirming that vassal States can, and when subject only to nude vassalage, do, possess the rights of sovereignty.

The authorities on this point have been quoted at some length for the reason that vassal States admittedly acknowledge the superiority of their Suzerains, and would appear therefore, to some extent, to lack the attributes of sovereignty, Independence and Equality. How to reconcile this fact with the apparently contradictory conclusion just arrived at is no doubt difficult.

Is it that the sovereignty referred to does not include the general rights both external and internal, but only the latter? It can hardly be so, for the possession of these external rights is the especial criterion of sovereignty. Many States obviously not altogether sovereign possess full power of home government.‡ It would appear that what is meant is rather that States in a condition of nude vassalage possess all the rights both external and internal of sovereignty in their relations both with foreign powers other

* Vol. IV., p. 132.

† IV., p. 140.

‡ As striking instances of the possession of marked rights of internal government not giving sovereign rights, the “ hereditary colonies ” of North America (Maryland and Pennsylvania) and the colonies of Rhode Island, Massachusetts, and Connecticut, prior to the independence of the United States of America, may be instanced. The government of the former descended in hereditary

than their suzerain, and also in relation with that power, although as between the vassal and the suzerain they may be and in fact are restricted by certain *conditions* necessarily inherent to the status of vassalage, these conditions being of such a nature as not to be incompatible with any of the admitted general rights of sovereignty. If this is the correct interpretation of the apparent contradiction, the question as to the rights of a vassal State may be considered partly answered, but it still remains necessary to consider what the conditions so inherent to vassalage are.

The comprehensive idea of the dependence of a State as vassal on another as suzerain is derived from, and analagous to, that of the feudal state of dependence of an individual vassal on his lord, and the conditions attaching to the dependence may be considered as identical. Feudalism, as has been said before, is of distinctly Frank growth,* and although there were somewhat similar systems in force previous to the general adoption of this feudalism, as, for example, the Roman Emphyteusis,† and the English system of Dependence, none of them were connected in any way with it, and as they were all superseded by it‡ it is only necessary to consider for the purpose here requisite this Frank system. This system depended on the connection with the superior either by Commendation or by succession and of the latter by free election, without any control on the part of the home Government, yet all continued to form integral parts of the British Empire as completely as the other colonial possessions. See Lucas, *Charters of Old English Colonies in America* (1850), pp. 39, 49, 60, 88, 99; and Mr. Gladstone's answer to Earl Percy in the House of Commons, May 5th, 1881, *Hansard*, vol. 260, p. 1831.

* Stubbs, I., 251.

† Maine says "it seems impossible to doubt that this was the precedent "copied by the barbarian monarchs who founded feudalism;" a statement at least open to question. See Austin's *Jurisprudence*, p. 880.

‡ For instance, in England the system of Dependence gave way to that of Frank Feudality after the Conquest.

Beneficium.* The former was the voluntary binding of a person to a lord, whether king or not, to be recompensed by the protection to be thenceforth afforded by the lord to his inferior, and was personal.† The latter was the voluntary binding of a recipient of land to the lord, whether king or not, who granted it, in return for the gift of the land, and was equally recompensed by the duty of protection on the part of the lord to the vassal and his land so received by him.‡

The former tie involved the obligation of fealty, the latter of homage,§ which may be considered as sometimes including fealty.|| Homage therefore designates the engagements of vassalage consequent on the holding of land on feudal tenure.¶ It was according to the French authors of three kinds:** 1st, the Ordinary Homage, which bound the vassal to render to the suzerain fidelity (*fiance, fiducia*), obedience to his final jurisdiction (*ressort de la justice, justicia*), and service in war (*service, servitium*), whether personal or by deputy, for a limited period; 2nd, the Plain or Simple Homage, which involved only the obligation to be faithful and to render service in war by deputy;†† 3rd, the Liege Homage, which was a strengthened form of ordinary homage, the service lasting as long as the war in which the lord was engaged endured, and being personal as will

* Stubbs, I., 153, note 1.

† Stubbs I., 153, 252-3.

‡ Ibid.

§ Stubbs, III., 514. This accords with Réal's statement that "Foi est relatif à la personne. . . . Hommage à la terre."—IV., p. 149.

|| Réal, IV., 149, says "foi" and "hommage" seem to present only one and the same idea. This is so in the more limited sense of homage; there the terms become identical, the homage only necessitating the obligation of fealty, but it is not so in its more extended sense.

¶ This is the meaning which Réal (IV., 149) also attaches to the term.

** Brussel, *Nouvel Examen de l'usage général des Fiefs en France*, pp. 95-120. Réal, IV., pp. 150-152.

†† Réal omits the service in his first definition of plain homage, but it is evidently an accidental omission, as he expressly includes it later in the chapter, p. 159.

be seen by comparing the forms of oath given in Britton,* the oath taken to a liege lord containing the words, "I will bear you faith of life and limb," the oath to a lord not liege omitting the words, "of life and limb." Besides these definite duties, homage, as the ceremony itself showed, inferred the rendering of respect or reverence.† From this it will be seen that the duties attaching to each description of homage were the obligation to be faithful, to render the lord some service in war and to hold him in respect, the special conditions of *ordinary* homage being resort to the jurisdiction of the lord, *liege* homage requiring in addition to this that the service should be personal.

In the older English books only two species of homage are spoken of—the *Homagium Feodale*, which was in fact the plain or simple homage, and the *Homagium Ligeum*.‡

If it be necessary to determine which of the three kinds of homage was the one due from a sovereign vassal, it will appear that it could only be the plain or simple homage, the *homagium feodale*. Réal, indeed, says§ that the simple homage is the kind rendered by those who, without being by the nature of their fiefs in any dependence on another prince, yet render homage for the purpose of obtaining protection. This is exactly the case of sovereign vassal States.

It is clear that liege homage could not be due. In the famous *Calvin's Case*,|| a case argued in the time of James I., before all the judges of England, and reported by Lord Chief Justice Coke, it was laid down that "*homagium* "*ligeum* is as much as *ligeance*," and "*ligeance* is a true "*and faithful obedience of the subject due to his sovereign.*"

Réal also says the¶ oath of liege homage is that which a

* Lib. III., c. 4. They are given in Stubbs, III., p. 515, n. 2.

† Bracton, Lib. II., c. xxxv. (2) and (8). Also Glanvill, Lib. IX., c. 4.

‡ Calvin's Case, 7 Rep., 7. Stephen's Commentaries, II., 427.

§ IV., 159.

|| 7 Rep., 1.

¶ IV., 158.

subject owes to a sovereign, and the general usage of the word bears out the statement. It is, therefore, not applicable to a sovereign seignory. It is true the word *liege* appears in some of the forms of homage rendered by sovereigns to other sovereigns, but this had reference to their obligations, not as sovereigns of their own kingdoms, but as holding also possessions unconnected with their kingdoms, as dukes, counts, &c. As, for example, the form of oath taken by Edward III. of England to Philip of Valois. "Le Roy d'Angleterre ayant les mains iointes entre les mains du Roy de France, & celuy qui parlera pour le Roy de France dira au Roy d'Angleterre. Vous deuenez homme lige du Roy de France qui icy est, comme Duc de Guyenne et Pair de France Comte de Poitou et de Monstrucil et luy promettez foy et loyauté porter; dites Voire, et le Roy d'Angleterre dira Voire."*

In taking this oath, Edward III. bound himself personally, not in his sovereign capacity as King of England, but in a subordinate capacity as Duke of Guienne, a part of the kingdom of France, this homage being, in fact, identical with that rendered by the other Peers of France.† The same observations are applicable to the vassalage of some of the Scottish Kings to England if, as appears most probable, the homage they rendered was *liege*. Malcolm IV. of Scotland did homage to Henry II. of England in 1157 and 1163;‡ but it was for the county of Huntingdon,§ or "for the lands of Cumberland, Northumberland, and Huntingdon," as Hollinshed says, "under condition that it should in no maner wise prejudice the franchises and liberties of the Scottish kingdome."|| William the Lion, who succeeded Malcolm, took an oath of allegiance to Henry II., with-

* Bodin, Lib. I., ch. ix., 170.

† Réal, IV., 159.

‡ Hollinshed's Chronicles, by Hooker, III., 69. Stubbs, I., 555.

§ Stubbs, I., 555.

|| History of Scotland, p. 185.

out any reservation, the charter containing the words "Wilhelmus Rex Scotiæ devenit homo ligius domini Regis Angliæ;"* but at that time Scotland was practically deprived of all title to sovereign rights, her chief castles being surrendered to Henry, and the Scottish bishops and barons compelled to take a direct oath of fealty to the English Crown.† Richard I. having freed Scotland from this bondage,‡ homage was again done to the Kings of England,§ but with the distinct protest that it was rendered for lands held in fief within the realm of England.|| After 1291 the Scottish kingdom fell for a time entirely under the control of England, and her kings of the house of Baliol, sovereign in name alone, took as might be expected the liege oath without any reservation.¶

Again it would appear that ordinary homage could not be due. A characteristic of both liege and ordinary homage was the obligation to resort to the jurisdiction of the lord, and this again could not attach to sovereign vassalages. This obligation appears, according to the French authorities, to be the distinguishing mark of certain inferior non-sovereign fiefs or seignories. There is some danger of falling into an error in reading the earlier authors on this point owing to a confusion in the nomenclature under which they refer to the superior seignories. Loyseau is the origin of this danger, for he calls those seignories Suzerain which have superior power but yet acknowledge a supreme, that is, it is presumed, a sovereign overlordship,** of course incorrectly according to the present system of nomenclature, where the former is styled Vassal

* Hollinshed, Chronicles III., pp. 95, 96. Scotland, p. 189.

† Stubbs, I., 556.

‡ A.D. 1189.

§ To John in 1200. It was also rendered to Henry III. in 1251 and 1257, &c. Hollinshed, Chronicles III., pp. 245, 254, &c.

|| Green, History of the English People, p. 182. Stubbs, I., p. 556.

¶ See Hollinshed, Chronicles III., pp. 290, 350, &c. Scotland, p. 208.

** Ch. II. and IV.

and the latter Suzerain. This seignory, he defines as the "dignité d'un Fief ayant Justice ;"* that is, therefore, not subject to resort to the jurisdiction of the superior lord. This definition is adopted by the later authors, and is affirmed as correct by Merlin in his *Répertoire de Jurisprudence*.† Whether by this seignory with superior power is meant a sovereign vassal State or not is not quite clear—if it be so it is a direct assertion that such States possess unrestricted jurisdiction, and that ordinary homage was not due from them. If, as seems most probable, a non-sovereign vassal State be meant, the inference is to the same effect, the addition of sovereignty could not, of course, derogate in any way from the rights of the seignory, and if the superior seignory, non-sovereign, were distinguished by being not subject to the jurisdiction of the supreme, or, as we should term it, the suzerain seignory, a superior sovereign seignory must *à fortiori* be also so distinguished, the sovereignty cannot add to, though it may diminish, the obligations of the seignory. Whether the form of simple homage was that adopted in the case of sovereign vassalages or not is, however, of little consequence. It is sufficient to recognize that the special characteristics of the other two kinds of homage were from the nature of the seignories absent in the case of sovereign vassalages, and that their duties were therefore only fidelity, respect, and such service as one sovereign State can render to another.

Many instances might be given in proof that these, and these alone, were in fact the conditions of tenure. A few only will be referred to.

That service was a condition, even in the case of a sovereign vassal State, is shown by the case of the Papal See and its vassal State Naples: whenever the Popes declared war against anyone, the Kings of Naples were

* IV., sec. 2.

† Title Suzeraineté.

in arms for the defence of the Papal Power.* That it is still considered a condition of vassalage generally, the recent instance of Egypt sending a military contingent to the assistance of Turkey in the last Turko-Russian war sufficiently demonstrates.

Again, in proof of the non-liability of vassal States, whether sovereign or not, to the jurisdiction of the suzerain: Scotland prior to 1291, although, as already pointed out, not subject to liege homage, was nevertheless in some sort vassal to the Crown of England;† but except during the short period of complete subjection to the power of Henry II. there was no appeal from the Scottish Courts to the jurisdiction of the English suzerain.‡ Also, in the case of the King of Sardinia, when a vassal of the Holy Roman Empire, for the Dukedom of Savoy and his Piedmont and Montferrat possessions, from the judgments rendered in these States there was no appeal either to the Aulic Council or to the Chamber of Wetzlar.§ To come down to modern times, Egypt, the Barbary Regencies, Servia, Greece, Moldo-Wallachia, all have been, or are vassal, yet not subject to the jurisdiction of their suzerain, the Porte; and, to instance the last-made vassal State, the Transvaal may be referred to—here the right of appeal to Her Majesty in Council has “entirely gone”|| since its erection into such State.

Admitting the correctness of the deductions as to the rights and duties of vassal States drawn from the authorities, and the analogy of the tenure of feudal fiefs, and referring back to the definition of sovereign rights, it appears that without express conditions, vassal States, since they are considered to be *de facto* sovereign, possess

* Bodin, I., ch. ix., p. 174.

† Stubbs, I., p. 555; Green, p. 180.

‡ Green, pp. 181, 183.

§ Réal, IV., 139.

|| Sir Henry James, Att.-Gen., in answer to Sir Henry Peek in the House of Commons, May 2nd, 1881.—Hansard's Debates, vol. 260, p. 1534.

in full all the rights consequent on the attributes of sovereignty,* with the simple restriction against the exercise of the same in any manner derogatory to the rendering of the fidelity, service, and respect due to their suzerains.

It is clear that the exercise of Internal rights cannot in any way interfere with the proper rendering of these duties; sovereign vassal States must therefore hold them as entirely as do other sovereign States.

With respect to International rights, there may be cases in which the rights, though possessed, may be partially restrained, and it will be well, therefore, to consider shortly these cases.

The condition of service can hardly affect the question, fidelity and respect may.

The first right mentioned under the head of international rights is that of legation or embassy. There may be some doubt whether the respect due to the Suzerain is compatible with the representation of the vassal at the Court of the suzerain, or with the direct negotiation between the two, but the balance of authority on the subject of the right of legation would seem to negative the doubt.

Grotius admits the right of legation to those States which are joined by an unequal league, of which vassalage is an instance,† “cum sui juris esse non desinant.”‡

De Wicquefort,§ speaking of “Princes who . . . possess “their fiefs in full sovereignty. . . so as to owe only simple “homage, notwithstanding it be accompanied with some “acknowledgments” adds, “yet that does not hinder ‘em “ . . . from sending Embassadors everywhere, even to the

* That this is so the consideration of any one right peculiar to sovereignty shows. To take one, the right of legation: Gentilis gives this right to those “qui pares sunt.”—De Legationibus, Liber Secundus, cap. VII.-X.—Twiss, Peace, sec. 186, to those “qui summi imperii sunt compotes inter se,” or to those “sui juris,” specifying thereby by paraphrases the two attributes—Equality and Independence.

† Lib. I., ch. iii., xxiii., 2. ‡ Ibid. Lib. II., ch. xviii., II., 2. § Page 16.

"Lord of the fiefs," and he instances the Duke of Parma and the Kings of Naples, before the Kings of Arragon had annexed the Two Sicilies, sending ambassadors to the Pope.

Vattel* considers that vassals who are not subjects retain, if they have not expressly renounced, the right of sending ministers to their suzerains, and of receiving their ministers in turn.

Klübert only admits to the class of States in which he includes vassal States, a "*capacité limitée*," but this evidently goes too far, as it draws no distinction between the right with regard to the suzerain State, and with regard to other foreign States.

Most of the other writers on International Law admit the *jus legationis* to be one of the rights of vassal States generally, but do not refer specially to it in connection with the suzerain; this aspect of the question can, however, hardly have escaped their observation, and their admission may be taken to extend to these relations.

It may be presumed, that what has been said as to the right of legation will apply equally to the right of negotiation or of entering into treaty agreement.† This, as well as the former, depends chiefly, if not entirely, on the assumption of equality or independence, and if the vassal State is considered so far on a footing of equality with, or independence of, its suzerain that it can be represented directly at the Court of that power, so must it be for the same reason held to be entitled to enter into negotiation and conclude treaties with it.

Again, as to rights of war and alliance. The fidelity owed by the vassal may hinder the exercise of these rights in the case of the suzerain being one of the

* IV., sec. 58.

† Sec. 141.

‡ Bluntachli expressly refers to and admits the right of the vassal to conclude treaties with the suzerain. Art. 444.

parties to the war or the projected alliance. In the instance of war, the duty of fidelity would apparently forbid the vassal to take up arms against the suzerain, but as suzerainty gives no right of interference with the affairs of the vassal, but only to certain services, so an attempt to interfere with its freedom or other privileges may, it is presumed, be justly repelled by force. In such a case, it is not the vassal that first commits a breach of the fidelity it owes, but the suzerain that first commits a breach of its pledge to protect and defend its vassal; this pledge being the duty of the suzerain, correlative* with that of the vassal to do him due service, the breach of obligation on the part of the suzerain must absolve the vassal from his duty. Where the suzerain is engaged in war with another power it would appear that the same obligation of fidelity would prevent the vassal combining with the enemy. Whether the duty of service would, on the other hand, always require him to take part in the war on the side of his suzerain will be presently considered.

Similarly as to the right of forming alliances, the vassal may justly form an alliance defensive, or even offensive, with a third Power, but it must not be to the prejudice of the suzerain if offensive, and if defensive it must only be directed against the latter, and it could only in fact be so if the suzerain were, as just pointed out, to break its pledge of protection by assailing the independence or other rights of the vassal.

So far as to the rights of the vassal State derived from its rights of sovereignty. One other remains unconnected with the rights of sovereignty, but which has incidentally been already fully commented on—that is, the right of protection. This was one of the most important conditions of every variety of feudal tenure; the lord pledged his

* As to the mutuality of the obligation see Bracton II., xxxv. (2).

faith to protect and defend his vassal in return for the pledge of the vassal to be faithful, and to render service.*

In defining the rights of the State subject to nude vassalage, the duties have been fully described with one exception. It has been shown that service was always due, but it has not been demonstrated to what extent. Can the suzerain claim assistance as due whenever he elects to declare war against, and for as long as he is at war with, another State? or, is the assistance only to be rendered when the suzerain is in extremity?

That the assistance is to be always rendered when the suzerain is in extremity is clear by referring to the feudal principle: even the "ordinary" vassal, whose service was limited usually to forty days, was not freed by such service, the duty of mutual protection would be neglected if in time of need, even after this limited time the vassal deserted his suzerain, and it is expressly laid down without any limitation that in such circumstances the aid should be continued.† That the assistance must be rendered during the continuance of all wars which the suzerain may be waging can be in a similar manner inferred. As all vassals owed service, limited or unlimited, personal or by deputy, without reference to the danger to the suzerain, but merely to his need, the service must therefore have been due in every war waged by the suzerains, and vassal States should be equally liable, while, as has been shown in the case of Naples, the practice appears to bear out the principle. Also, whatever limit there may have been in the case of an

* That the obtaining of protection was one of the chief objects of vassalage is shown by a curious case quoted by Réal, on the authority of Albert d'Estrasbourg, of two nobles—Humbert, Dauphin of Auvergne, and Simon, Count of Savoye—becoming vassals, the one of the other, obviously solely for the purpose of mutual protection in case of need.—Réal, IV., 163.

† For example, Bodin I., ch. ix., 166, says: "*Il n'est licite au vassal de laisser son seigneur au besoin, . . . le vassal mesmement celui qui est lige doit secours.*"

individual vassal there is no trace of any limit to the time for which a vassal State considered itself bound to render service. Here again the principle is in conformity with practice, for "Plain" Vassalage, it has been pointed out, most nearly corresponds to the Vassalage of States, and the service of "plain" vassals was not limited in time.

The next question to be determined is, when is the vassalage nominal, and when therefore does the vassal possess all the attributes of Sovereignty.

Phillimore* says that the feudal relationship "can hardly be said to exist in these days, except where . . . there is a direct and practical acknowledgment of a "superior sovereignty," in other words, that none of the existing vassal States, possess the attributes of sovereignty. This may be so, but the statement follows and is based on another to the effect that the feudal relation is now confined to the provinces of Turkey;† this is at the present time hardly correct, as the instances of Tonquin alleged to be in vassalage to China, the Sulu Islands alleged to be in vassalage to Spain, and the Transvaal in vassalage to Great Britain, show. The statement may, then, be considered to be based on an assumption incorrect at the present time, and it may be well, therefore, to consider vassalage as still capable of being either sovereign or non-sovereign.

The vassalage is clearly sovereign if so defined by the terms of the first investiture, or by what in modern time generally takes its place, the convention of settlement, when, in fact, a sovereignty has been expressly given, "en fief;" it must be so also if the vassalage is not limited by any terms in this investiture or convention. Loyseau points out that where sovereign princes established "hautes seigneuries" capable of sovereignty, and they wished to create what he calls "seigneuries Suzeraines," by which as

* Vol I., art. xcvi.

† Vol. I., art. lxxv.

we have pointed out, he probably meant non-sovereign vassal lordships, they did not content themselves with retaining the feudality, but *by express condition* they retained to themselves* the sovereignty, inferring thereby that if they did not retain the sovereignty it became by the fact of the simple grant, an attribute of the vassal seignory, and this is in strict accord with the idea of simple vassalage as already described, and might fairly have been presumed. On the other hand, if the suzerain is seen to be in the possession of some of the rights naturally belonging to the vassal State, and which, if exercised by it would be sovereign attributes, it is plain that the vassalage is something more than nude or nominal, and it may be presumed that the sovereignty has been reserved by the suzerain. Many cases may be cited, in which the suzerain has permitted the vassal to exercise some sovereign rights, strictly reserving to itself the abstract sovereignty, not one can be quoted in which the suzerain has retained a single sovereign right, while admitting that the vassal is a sovereign State. From this follows the important deduction, that in all cases where the suzerainty is not plainly nominal, as the abstract sovereignty is in the suzerain, the vassal State cannot exercise any rights not expressly granted to it, it matters not whether under compulsion or no, without encroaching on the sovereignty of its suzerain. It is not forgotten that an attempt has been made by some writers on International Law to make abstract sovereignty a divisible quality by including vassal, protected, tributary, confederated, all States bound as it is termed by an unequal alliance in an arbitrary class which they have termed semi-sovereign (*mi-souverain, halbsouverän*).† The

* II., 49.

† Moser, *Europäischen Völker-Rechts*, Buch I., sec. 26. Martens, sec. 20. Klüber, sec. 24. Ortolan, I., p. 42. Heffter, sec. 19. Twiss, sec. 24. Bluntschli, art. 92. Calvo, sec. 62.

word, if a proper one, would seem to apportion sovereignty between the States, but it is obviously an incorrect term.* Heffter points out that it is vague, and presents even a kind of "contre-sens;"† Wheaton calls it a solecism;‡ Austin§ considers the epithet "to import that the governments "marked with it are sovereign and subject at once," and he gives it as his opinion that "there is no such political "mongrel as a government sovereign and subject;" and Phillimore speaks of States being so designated with "admitted impropriety of expression."|| It is plain that its use has led to confusion, for the writers who adopt it with greatest confidence disagree as to the meaning to be attached to it. Their general opinion is that it describes the possession by the States so named of all interior rights, but a modification only as some say, a complete absence according to others, of the external or international rights. Twiss, on the other hand, considers that the term suggests a subordination of position rather than a modification of the manner in which the foreign relations are maintained, and Sir Robert Phillimore, in his judgment in the case of "*The Charkieh*,"¶ is reported to have said that he was "inclined to think that the sovereign of a State in the "latter category" (half sovereignty) "may be entitled to "require from foreign States the consideration and privileges which are unquestionably incident to the sovereign "of a State who is in the former category" (Sovereignty absolute and pure). Whichever of these meanings attaches to the word, it is submitted that it is a term not applicable to non-sovereign vassal States, if it is intended by it to

* With greater propriety of expression Hertius speaks of "quasi-regna," Neyron of "États du second ordre," and Réal of States governed by "princes-sujets." The latter insists that "La souveraineté est une et indivisible, la partager c'est la détruire," IV., 111.

† Sec. 19.

§ Jurisprudence, pp. 258 259.

¶ L.R., IV., A. and E., at p. 77.

‡ See Twiss, sec. 25.

|| Vol. I., art. lxxvi.

derogate from the possession of entire sovereignty by the suzerain in respect to its vassal state. .

It is hardly necessary to state that the conditions peculiar to feudal vassalage which have been shown to attach to nominal vassalages must also attach to the more onerous vassalages. The observations, therefore, which have been made with reference to the duties, respect, fidelity and service of nominally vassal states in regard to their suzerains, and the effect of such duties in partially restraining the exercise of rights equally apply to those vassalages not merely nominal, and need not be repeated. The duties owing to the peculiar relationships are the same, and their effect in restraining rights must be also the same where at least the suzerain has allowed the vassal to exercise those rights at all.

The next question is, what rights can be reserved by the suzerain without the vassal State being indistinguishable from the other dominions of the suzerain ; what rights must be reserved without the vassalage becoming simply nominal and the vassal entirely sovereign. It is difficult, considering the question upon principle, to specify any one of what are called the sovereign rights of a State, which may not justly be reserved by the suzerain. It is true that some limited power, at all events of interior government must be allowed the vassal, or the name would cease to convey any meaning, but there would appear to be no limit either upon principle or in practice to the partial or complete reservation of any particular right or rights.

What rights must be reserved to maintain more than a nominal vassalage is somewhat more difficult to determine. It is submitted, however, that they must be not only some, but all the external or international rights of sovereignty. No instance can be cited in which a State subject to vassalage has or has had the general right

of war, neutrality, and peace ; of alienation of territory ; of legation or embassy, without possessing them all, and being *ipso facto* a sovereign State, subject to no vassalage other than nominal.

It may be well here to cite instances in proof of the statements herein put forward. Examples in the middle ages of vassalages merely nominal, and which did not derogate from the possession of any of the rights of sovereignty can be freely given. Whether any exist at the present time or are likely yet to be formed is doubtful. The numerous feudatories of the Papal See at various times, such as Arragon, England, Naples,* Sicily, Poland, Sardinia and many others† were all kingdoms and sovereign. Some at least of the States subject to the Holy Roman Empire were also of this class. The rights exercised by the German States vassal to the Empire varied at different periods, and their extent was frequently disputed. Prior to the Peace of Westphalia, indeed, their rights were so doubtful that it is almost impossible to determine their international position. It seems to be admitted that they were not, up to that date, possessed of sovereign power, and that the German Emperors insisted on their right to regulate the foreign relations. They would seem to be at that time, therefore, non-sovereign vassal States, having no international status. If they did at any time exercise any one of the external rights of sovereignty—as, for instance, by sending public Ministers to foreign States—it may well be that this was allowed, not on any principle, but owing rather to foreign intrigue and the desire to weaken the Empire on the part of the nation admitting such Minister. After the Peace of Westphalia, on the other hand, the German States enjoyed,

* From the 11th century to 1818. Wheaton's Elements, Part I., ch. ii., 14. Creasy, 95. Phillimore, Vol. I., art. xcvi.

† See Bodin, lib. I., ch. ix., 195.

as a consequence of the Imperial capitulations,* the right to form offensive and defensive alliances amongst themselves and with foreign Powers (which shows they could exercise the right of peace, neutrality, and war), and the right of sending and receiving public Ministers;† in fact, *all* the rights of Sovereignty. They were, therefore, merely nominal vassals of the Empire.‡ It is not forgotten that the judges of the several States were under the supreme jurisdiction of the Chamber of Wetzlar; but the Chamber being formed, in fact, by the States themselves, the jurisdiction cannot be considered a sign of subjection to the suzerain, but rather as an arrangement for the constitution of a common appellate court.

Examples of vassal States, on the other hand, possessing none of the external rights of sovereignty, but all or only some of the internal rights, may also easily be multiplied. Normandy, Brittany, and Flanders § were all vassal to the Crown of France before their union to that kingdom; they certainly were not privileged to exercise any international rights, but they did exercise some rights of internal government. It is said that they were in constant and peaceable possession of the right of making laws; they did not possess every interior right however, notably that of final jurisdiction, for all the judgments given in their "Parliaments" were subject to appeal to the "Parliaments" of the King.¶

To come to more recent times, the State of Kniphausen, in North Germany, at least subsequently to 1825, ¶ was a

* Paix d'Osnabruck, art. VIII. Paix de Munster, secs. 62, 63. See Schoell, *Traité de Paix*, Tom. I., pp. 89, 113.

† Vattel, II., sec. 154. Bluntschli, art. 76 (1).

‡ Vattel refers to them as "a Republic of Sovereigns."—IV., sec. 59.

§ Before Francis I. renounced his rights in favour of Charles V., by the Treaty of Madrid, A.D. 1515.—Merlin, Art. "Bar.," p. 8. See also Bodin, p. 172.

¶ Merlin, Art. "Bar.," p. 6, &c.

¶ Prior to the dissolution of the Holy Roman Empire it was a fief of that Empire, it then became an independent sovereignty until occupied by Napoleon I. and was transferred to Holland in 1807.

State vassal to the Duchy of Oldenburg, and possessed many interior rights, such as judicial power and the rights entailed by having a free commercial flag; but again no international rights.* The Sovereignty was exercised by the Duke of Oldenburg, and this included all the rights with respect to foreign relations.† Of the internal rights, that of legislation was wanting, at least in its entirety; the Federal Acts of the German Confederation being expressly binding on the State.‡

Egypt, Moldo-Wallachia, Servia, Greece, may *also be referred to as States which at some time possessed all rights not international, while they all, with perhaps the exception of Egypt, at other times were restrained from exercising some of them. To take Egypt first, as being one of the most important. In 1840 (it is hardly necessary to consider the position of the country prior to that date, but it may be mentioned that it is epitomised in Sir Robert Phillimore's judgment in *The Charkieh*),§ the administration of the Pachalic was granted by the Sultan of Turkey to Mehemet Ali and his descendants in the direct line, with the right to collect and retain to his own profit taxes and customs, and to maintain military and naval forces.|| The internal rights, however, were not wholly granted. The right of independent legislation was denied, for, by Section Four of the Act annexed to the Convention for the pacification of the Levant, which defined the status of Egypt, all the laws of the Ottoman Empire were to apply to Egypt. Also, the full right of determining the Constitution was not granted; this is shown by the fact that when it was desired to modify the

* See the Convention between the Duke of Oldenburg and Count Bentinck. Hertslet, *Map of Europe by Treaty*, I., 722.

† Arts. II. and IX. of the Convention.

‡ *Ibid.*, art. III.

§ L.R., IV., A. and E., 59.

|| See the Convention between Great Britain, Austria, Prussia, and Russia and Turkey, 15th July, 1840; Hertslet's *Treaties*, V., 535.—*Map of Europe*, II., 1008.

succession to the Viceroyalty, it was done not by the Viceroy, but by a special Firman issued by the Porte.* The powers granted under this Convention were confirmed and extended by various Firmans of later date. By the Firman of June 8th, 1867, complete autonomy, including the right of legislation, was granted to Egypt. It recites that the "internal administration of the province, and consequently "its financial, material, and other interests are confided to "the Government of Egypt" without any reservation, even to the extent of the furtherance of those interests by "entering into arrangements with foreign agents," and by it was also given permission to the Egyptian Government "to frame such regulations as may seem necessary "in the form of special Tanzimat for the Interior."† The original sovereign rights, however, of the Porte were expressly reserved; no treaties or conventions having any political signification might be concluded by Egypt, all such power being reserved to the Porte. The Firman of June 8th, 1873,‡ makes the granting of internal and the withholding of external rights still more definite. By it the civil and financial administration, the authority to make internal regulations and laws, contract loans, maintain troops to guard and defend the country, confer military rank up to that of colonel, and to coin money, are confirmed to the Khedive; but the Egyptian land and sea forces are to be considered part of the Imperial Ottoman army and navy, and are to carry the Imperial flag, the money is to be struck in the Imperial name, and foreign political relations are to be conducted by the Porte.

Servia, previous to the Treaty of Berlin,§ was subject to

* Firman, June 8th, 1867.—Hertslet's Treaties, XIV., 1026. Firman, June 8th, 1873.—Ibid., p. 1029.

† Confirmed by Firman, September 10th, 1872.—Hertslet's Treaties, XIV., 1027.

‡ Hertslet's Treaties, XIV., 1029.

§ Article XXXIV.

the suzerainty of the Porte. It is somewhat uncertain, however, when it was first considered to have developed from a simply subject to a vassal State. After the struggle of the Servians for liberty in the first twelve years of the present century, the Porte, by the Eighth Article of the Treaty of Bucharest,* promised to make over to them "the administration of their internal affairs." An insurrection broke out the following year, and was put down by the Porte, and consequently no effect was given to the provisions of this Article. Then came the Treaty of Ackermann in 1826,† by the Fifth Article of which the Porte promised to put into immediate execution the clauses of the Eighth Article of the Treaty of Bucharest, and (Annex 2) to grant to Servia certain privileges, the most important being the "choice of its Chiefs" and the "Independence of its internal administration." It was not, however, until after another Russo-Turkish war and another treaty, that of Adrianople, in 1829,‡ containing a renewal of the promise of the Porte, that any of these privileges were in fact given to Servia. In that year by Hatti-Sherif, and in 1830, 1833, and 1838 by Firman, constitutional rights were formally granted. In none of these treaties or proclamations was Servia referred to as other than a subject part of the Empire, and the Servians as equally with the Turks, subjects of the Porte. It is generally said that Servia, as well as Moldavia and Wallachia, was placed under the suzerainty of the Porte at the Peace of Paris in 1856, but on reference to the Treaty § it will be seen that though as to Moldavia and Wallachia, it is declared that they "shall continue to enjoy "under the Suzerainty of the Porte" their privileges, and the Porte is spoken of as their "Suzerain Power," || with

* Between Russia and Turkey, May, 1812.—Hertslet's Map of Europe, III., 2030.

† Hertslet's Map of Europe, I., 758. ‡ Ibid, II., 813. § Ibid, II., 1250.

|| Arts. XXII., XXV., &c.

regard to Serbia, it is simply declared that it shall "continue to hold of the Sublime Porte." Nevertheless, in 1862, in the Protocol of Conference signed by the Seven Powers, including Turkey,* relative to the affairs of Serbia, the Porte is styled the Suzerain Power.† If, however, Serbia was vassal in 1862 it is difficult to see any reason for considering that she was not equally so in 1830. It was then that Serbia first received an independent constitution, and the subsequent Treaty and Firmans did little more than confirm the same. Certainly none of the later Firmans can be considered in the light of the first creation of a vassalage. It is clear, indeed, that Serbia claimed to be vassal only, not only before the Treaty of 1862, but before that of 1856, for in the Protest addressed by the Servian Government to the Sublime Porte in 1854 against the occupation of the Principality by Austrian troops,‡ the Porte is referred to as the "Suzerain Court," and this would hardly have been done if the position had not been so considered at Constantinople, as the document is couched in the most deferent terms, evidently with no intention of raising an unfriendly feeling, which an assumption of an unauthorised degree of freedom would certainly have done. By the Firman, then, of that year (1830),§ hereditary succession was decreed to Prince Milosch with the right of "Internal Administration" (administration of justice, liberty of worship, organisation of armed force for the security of the public peace in the interior, &c.), but Turkey reserved the right to maintain and garrison the Imperial fortresses in the country.|| This might not have been intended to in any

* Hertslet's Map of Europe, II., 1515; Hertslet's Treaties, XI., 575.

† In the Firman of April, 1867, the Porte adopts the same title.—Hertslet's Map of Europe, III., 1800.

‡ Hertslet's Map of Europe, II., 1196.

§ Ibid, 842.

|| It was not till 1867 that Turkey withdrew these garrisons.—See Firman of April 10th, 1867; Ibid, III., 1800.

way check the free exercise of internal government but that the Porte considered it still had a right to interpose in internal matters, is shown by the Firman of the 24th of December, 1838,* in which the Sultan orders that a Council shall be formed in the manner he thereby defines, to decide questions relating to justice, taxes, number of troops, &c., and deciding other constitutional arrangements.

The interference of the Porte in the internal arrangements of Servia was gradually minimized, and the administration more freely exercised by the Prince, but Servia obtained no international rights while the Porte remained Suzerain, the number of her troops was theoretically, at least, strictly limited to that "necessary to maintain the tranquility and *internal* order of the country,"† and apparently no attempt was openly made to enter into relations with foreign powers, or affect the right to do so.‡

The history of the vassalage of Moldavia and Wallachia from the treaty of Bucharest, to the freeing of the United Provinces under the name of Roumania by virtue of the Treaty of Berlin,§ is similar proof of the power of the Suzerain to grant limited or unlimited internal government, and the practice of not allowing to the Vassal any exterior rights.

The Treaty of Ackermann|| confirmed the right of the Principalities to self-government, but reserved to the Porte

* Hertslet, Map of Europe, v. II., 968.

† Treaty of Kanlidja, 1862. Hertslet, Treaties, XI., 575; Map of Europe, II., 1515.

‡ At least before 1869. In that year the Servians assumed a Constitution, the 8th Article of which commences, "Le prince représente le pays dans toutes ses relations extérieures et conclut les Traités avec les Etats étrangers."—Hertslet, Treaties, XV., 471. By this time, however, all dependency on the Porte had been repudiated by Servia, although its independence was not generally recognised.

§ Article XLIII.

|| A.D. 1826. Hertslet, Map of Europe, I., 747.

the right to be consulted in the appointment of the Hospodars. The Treaty of Adrianople* again confirmed to the Principalities "the privilege of an independent internal "administration" under the suzerainty of the Porte. By the Treaty of St. Petersburg,† the Porte formally agreed to recognise the constitution of the Principalities, "finding "nothing in them which can affect its rights of sovereignty;" and to publish a Firman in accordance with the same, it being settled by the same Treaty that the garrisons in the two provinces should be fixed at the pleasure of the Porte, which should also give colours to the garrisons and a flag to the merchant navy. Later in the same year the Firman‡ was published, by which Hospodars were to be elected to exercise full "internal "administration." By an Act between Russia and Turkey in 1849,§ the Sultan assumed the right to elect the Hospodars for seven years, and to alter the organic status. By the Treaty of Paris|| the Principalities are to "continue to enjoy under the Suzerainty of the Porte " . . . the privileges and immunities of which they "are in possession," which are defined to be "Independent "and National Administration as well as full liberty of "Worship, of Legislation, of Commerce, and of Navigation," and the right to maintain a "National Armed Force" to "maintain the Security of the Interior, and to ensure that "of the Frontiers." Their rights were also secured by the Convention signed at Paris in 1858¶ to the Principalities "under the Suzerainty of his Majesty the Sultan." These rights are enumerated as Free Administration exempt from

* A.D. 1829. Hertslet, Map of Europe, II., 813.

† Between Russia and Turkey, January, 1834. Hertslet, Map of Europe, II., 936.

‡ Hertslet, Map of Europe, II., 951.

§ Hertslet, Map of Europe, II., 1090.

|| A.D. 1856. Hertslet, Map of Europe, II., 1250. Hertslet's Treaties, X., 533.

¶ Hertslet, Map of Europe, II., 1329; Hertslet's Treaties, X., 1052.

any interference of the Porte with the Executive, Legislative, and Judicial Power, but it is expressly laid down that the "Suzerain Court shall arrange with the Principalities the measures for the defence of their territory in case of external aggression," and that "As hitherto the International Treaties which shall be concluded by the Suzerain Court with Foreign Powers shall be applicable to the Principalities in all that shall not prejudice their immunities." Until the events immediately preceding the Treaty of Berlin, the rights secured under this Convention of Paris were fully enjoyed by the United Provinces, but it is clear that neither these nor any antecedently possessed were other than strictly non-international rights. The Firman of Investiture of Prince Charles of Hohenzollern as Prince of the United Principalities of Moldavia and Wallachia* plainly shows this, and it is moreover important as showing that the granting of full interior rights was not considered to deprive the Suzerain of the Sovereignty over his vassal State. After conferring hereditary rank and the prerogatives of Prince of the United Principalities,—the prerogatives referring to the immunities enjoyed by Moldavia and Wallachia,—the Sultan enjoins the Prince to "respect in their integrity my rights of Sovereignty over the United Principalities," and limits the armed force to be maintained to a number considered, it is presumed, sufficient for defence, and orders that no Treaties or Conventions shall be directly concluded with Foreign Powers other than Arrangements of an unofficial or non-political character.

Greece again, previous to 1830, was a vassal State under the suzerainty of the Porte. The Treaty of London† between England, France, and Russia defines the position to be held by Greece thenceforward to be under the "Suzeraineté" of the Sultan as Lord Paramount

* Constantinople, October 23rd, 1866.—Hertslet, *Map of Europe*, 1783.

† July 6th, 1827.—Hertslet, *IV.*, 304.

("Seigneur Suzerain"), the Greeks to be governed by authorities whom they shall choose and appoint themselves, but in the nomination of whom the Porte shall have a defined right, and to have the right to send to and receive from the Signatory Powers, Consular Agents (not Ministers, thus showing that in the opinion of these Powers Greece was not entitled to the *jus legationis*).

At the Conferences between the same Powers in 1828* and 1829,† the Protocol drawn up in the latter year being adhered to by the Porte in September, 1829,‡ it was determined that this control on the part of the Porte over the nomination of the Greek authorities should cease; but, that by virtue of the suzerainty, every Chief of Greece should still receive his investiture from the Porte. The administration should be assimilated to monarchical forms, and be entirely in the hands of an hereditary Prince, but still no international rights were granted until the following year, when, by a Protocol signed at London,§ and accepted both by Greece and by the Ottoman Porte,|| the same Powers determined that Greece should be freed from vassalage and raised to the dignity of an independent State under a sovereign Prince.

The relations between the Barbary States, Algiers,¶ Tripoli, and Tunis** and the Porte have been very indefinite: each appears to have been practically independent, while acknowledging the supremacy of, and being theoretically, at least, dependent on the Porte as Suzerain.†† Each frequently entered into treaty engagements with European

* Hertslet, Map of Europe, II., 798. Hertslet, State Papers, XVII., 405.

† Hertslet, Map of Europe, II., 804. ‡ Ibid, 812. § Ibid, 841.

|| See Treaty of London, 1832, Art. IV. Hertslet, Map of Europe, II., 895.

¶ Before its seizure by France in 1830.

** The intervention of France in Tunisian affairs in 1881, has not at present simplified matters.

†† Since before the time of Charles II. See Molloy, De Jure Maritimo, IV., sec. 4.

Powers directly, and these Powers have often enforced redress in vindication of the injuries done to their subjects, immediately, and, in the first instance, from the dependencies themselves. Treaties, for instance, can be referred to between Great Britain and Algiers from 1682 to 1824,* France and Algiers from 1764 to 1830,† Sweden, Austria, Denmark, Spain, and the United States of America with the same State from 1729 to 1816;‡ also between Great Britain and Tripoli from 1662 to 1816,§ between Holland, Austria, France and Spain and Tripoli from 1713 to 1830,|| between Great Britain and Tunis, 1662 to 1875,¶ and between other European Powers and the same State from 1712 to 1856, but it has never been admitted by the Porte that they had the right to enter into such engagements, and not only has the Porte frequently addressed commands to these dependencies relative to their conduct in matters in which foreign nations were interested,|| but they have rendered or promised obedience to these orders; and indeed the European Powers have acknowledged the right of the Porte to enter into treaties on behalf of these States.‡‡ Again, although redress has been enforced directly

* Hertslet, *Treaties*, I., 58 87 Martens, *Recueil de Traités*, I., 68. —Nouveau Supplément, I., 660.

† Martens, *Supplément*, III., 68. —Nouveau Recueil Général, VIII., 362.

‡ Martens, *Recueil*, VI., 296. —Nouveau Recueil, V., S., 6.

§ Hertslet, *Treaties*, I., 125 153. Martens, *Supplément*, I., 140. —Nouveau Supplément, I., 493.

|| Martens, *Supplément*, I., 98 — Nouveau Recueil, X., 52.

¶ Hertslet, *Treaties*, I., 157 174, III., 28, XIV., 541. Martens, *Supplément*, I., 147. —Nouveau Recueil Général, XX., 78

** Martens, *Supplément* I., 92. —Nouveau Recueil Général, XVII., 1re P., 179.

‡‡ To Algiers, Tripoli and Tunis in 1803 (obedience to a treaty of navigation and commerce which the Porte had concluded with Prussia), Martens, *Recueil* (2), VIII., 465. To Tripoli in 1848, 1850, 1855, 1858, 1859, 1869 (Suppression of Slave Trade), Hertslet, *Treaties*, IX., 738, X., 602; XI., 551, 553, XIII., 836, 837, 843, &c.

‡‡ See *Treaties between Great Britain and Turkey* (Tripoli and Tunis), 1675, Hertslet, *Treaties*, II., 346, Prussia and Turkey (Algiers, Tripoli and Tunis) 1803, Martens, *Recueil*, (2), VIII., 465; Great Britain, France, Italy and Turkey (Tripoli), 1873, Hertslet, *Treaties*, XIV., 540.

against the dependencies, Turkey has also been held liable for losses sustained at their hands; in 1783 for instance, Austria obtained a guarantee from Turkey against the "korsaren aus den Barbaresken-kantonen,"* and in 1826 Russia exacted an indemnity from the Porte for the damage to subjects and merchants of Russia "by the pirates of the Regencies of Algiers, Tunis and Tripoli."† In proof also that the European Powers have never admitted these Dependencies to the *jus legationis*, none have ever accredited public Ministers to their Courts but only Consuls.‡ The relations indeed are said to be "of an anomalous and perplexing character,"§ and "the necessity of the cases" and "the reason of the thing have rendered this irregular mode of international proceeding unavoidable."||

A suzerainty which perhaps more than any other interests this country, is that of Her Majesty over the Transvaal. By the Convention for the settlement of that territory,¶ complete self-government was guaranteed to the inhabitants of the Transvaal, subject to the suzerainty of Her Majesty, her heirs and successors, with the reservation of the right to appoint a British Resident, of the right to move troops through the State in times of war, or when war is apprehended, of the control of the external relations of the State, including the conclusion of treaties and the conduct of diplomatic intercourse with foreign powers—a clear instance of a vassal State having full internal and no external rights.

A case from the far East may be also referred to of the exercise of external rights by the Suzerain. In Japan, prior

* Martens, Nouveau Recueil Général, XV., 459.

† Treaty of Ackermann, Art. VII. Hertzslet, Map of Europe, I., 751.

‡ Phillimore, J., art. xc.

§ Ibid. I., art. lxxxvi. Boyd's Wheaton, p. 50.

|| Ibid. I., lxxxvii.

¶ See the *Times*, August 5th, 1881.

to the suppression of their régime by the Mikado, in 1871,* the Daimios held apparently a practically analogous position to vassal princes in the West, subject to the suzerainty of the Mikado.† The Mikado, in 1867, by treaty with the European Powers, threw open certain ports to foreigners for the purpose of trade, and this international arrangement he ordered by proclamation to be notified throughout, not only the government territory, but the territories of the Daimios,‡ as an international arrangement affecting them, and lawfully made by him on behalf of those his vassal States.

As bearing in the same manner on the Suzerain's right to control the international relations of States vassal to him, the action of the Chinese Government may be quoted with regard to the proposal of France to deal directly by Treaty with Tonquin. The Chinese Ambassador, acting on the instructions of his Government, at once remonstrated on the grounds that China was the suzerain State, and that in that character it could not view with indifference anything which might alter the international relations of Tonquin.§ It may be doubted whether, seeing that the independence of Tonquin has been stipulated by the Treaty with France of 1875, the objection can be maintained, but the fact that it has been put forward tends to confirm the principle of the Suzerain's right to the control of international arrangements which concern the vassal State.

A similar remark may be made with reference to the threatened action of the Spanish Government with regard to the granting of a charter to the British North Borneo Company, giving power to it to trade, fly flags, &c., and exercise certain territorial and other rights somewhat

* Bluntschli, art. 77.

† Sir Rutherford Alcock, *The Capital of the Tycoon*, &c.

‡ Hertalet, XIII., 622.

§ *The Times*, October 8th, 1881.

similar to those formerly exercised by the East India and Hudson's Bay Companies. Spain claiming suzerainty over North Borneo by reason of a Treaty with the Sultan of the Sulu Archipelago, a question has been raised in the Spanish Cortes as to the right of the Sultans of Brunei and Sulu to make over their jurisdiction to the Company on the grounds, it may be presumed, that such a transaction would be in contravention of the rights of Spain as Suzerain.

In considering the subject of Suzerainty with reference to particular instances, it must be remembered that the status of a vassal State is liable to apparent modification hardly to be reconciled with any principle deduced from theory. Foreign interests, national instincts, the increase in strength of the vassal, the decrease in power of the suzerain State may, for a time, lead to the assumption on the part of the vassal or of the suzerain of rights not theoretically possessed by it. On the whole, however, it is submitted that the principles herein suggested are borne out not alone by theoretic deduction, but also by the practice obtaining among nations, and that if and so far as the practice in any particular case may appear to be not in unison with the theory, it will be found on further examination that the practice is temporary and peculiar, or otherwise abnormal, and in no wise disproves the truth of the deduced theory.

Briefly recapitulating the results obtained from the consideration both of practice and principle, it will appear that vassal States are of two distinct classes, nominal and real, that from both classes there are due to the suzerain certain feudal duties; that these duties in no way interfere with or modify the exercise of the rights possessed by the vassal States; that these rights include, in the case of nominal vassalage, both all external and all internal rights, by reason of the nominal vassal being in every way sovereign; that in the

base of real vassalage (the class including every vassal State lacking a single sovereign right), the rights, by reason of the non-sovereignty of the vassal, include none that are exterior, and only those interior rights which are expressly granted by the suzerain, and that the special duties engendered by the peculiar relationship are on the part of the vassal, fidelity, service, and respect, and on the part of the suzerain, the obligation to protect and defend the vassal, the duties being correlative and mutual. "Mutua quidem debet esse domini et homagii fidelitatis connexio, ita quod quantum homo debet domino ex homagio, tantum illi debet dominus ex dominio."*

CHARLES STUBBS.

IV.—NOTES ON EARLY ENGLISH LAND LAW.

VILLENAGE, VILLEIN TENURE AND COPYHOLDS.

THE first condition for a clear understanding of the "base tenures" of our books is to keep in view the distinction between the tenure of the land and the personal condition of the tenant. For this, as recognised in the 13th century, the classical authority is Bracton. He mentions tenants on the king's demesne, whose ancestors held by free services, but were put out by the strong hand, and were allowed to take back their holdings to be holden in villenage by base but certain and assigned services (cp. as to this, Dial. de Scaccario I., c. x.). These tenants are personally free, "since they perform their services not in regard of their persons, but in regard of their holdings." They cannot bring the ordinary real actions "but only the little writ of right according to the custom of the manor;" that

* Glanvill, lib. IX., c. 4, sec. 1.

is, the jurisdiction was in the king, not as king, but as lord of the particular manor. They were called *gleba ascriptitii*, (cp. again the Dial. de Scacc., *loc. cit.*), but Bracton regarded this as expressing not a bondage, but a right; not that they might not go elsewhere, for "they shall not be enforced to hold such a tenement unless they will," but that the lord cannot remove them as long as they perform the services (fo. 7a). Again "the tenement changes not the condition of a free man any more than of a slave. For a free man may hold in mere villenage, doing whatever service thereto belongs, and shall none the less be free, since he does this in regard of the villenage and not in regard of his person. . . . Mere villenage is a tenure rendering uncertain and unlimited services, where it cannot be known at eventide what service hath to be done in the morning, that is, where the tenant is bound to do whatever is commanded him" (fo. 26a). Again, "Another kind of tenement is villenage, whereof some is mere and other privileged. Mere villenage is that which is so held that the tenant in villenage, *whether free or bond*, shall do of villein service whatever is commanded him, and may not know at night-fall what he must do on the morrow, and shall ever be held to uncertain dues; and he may be taxed at the will of the lord for more or for less . . . yet so that if he be a free-man he doth this in the name of villenage and not in the name of personal service . . . but if he be a villein [by blood], he shall do all these things in regard as well of the villenage as of his person" (fo. 208b). The only difference in the services was that the *merchetum* on marrying a daughter, being an incident of personal servitude (as a fine paid to the lord for depriving him of a slave) was not demandable from the free man holding in villenage. Privileged villenage is then described as the tenure of the personally free men already mentioned in the passage first cited. I suppose the personally free man who held in

villanage, privileged or not, might always perform the services by deputy if he could find one.

Thus in Bracton it is quite clear that the conditions of the tenure and the personal status of the tenant have no necessary connection. Not only a free man may hold servile land, but a serf may hold and deal with free land as against everybody but his own lord (fo. 26b). And in Littleton, and Coke's commentary on his text, the distinction is equally clear, (compare Co. Litt. 57b, 58a, with Litt., s. 172, and Co. Litt., 116, 117). There is already a source of confusion, however, in the double meaning of *villanus*. At the time of Domesday the serf by blood was called *servus* (later *nativus*), never *villanus*. But gradually, by a kind of euphemism, the word *servus* was dropped, and *villanus* came to mean sometimes, as aforetime, a man holding by a certain kind of service, but often a man personally unfree. In Glanvill we see the terminology in a state of transition. He always calls the serf *nativus*, but his condition (not merely the tenure, but his personal state) is called *villenagium*; a reclaimed serf is said to be *in villenagio positus* or *in villenagium clamatus*. Bracton freely uses *villanus* as synonymous with *nativus*. By Littleton's time the word villein seems as a rule to have imported personal servitude, though a careful man might speak of a "villein in blood" if he meant to secure himself against mistake. The distinction in substance, as above said, is still perfectly clear. Coke, I think, misinterprets Littleton in one place, s. 209. Littleton says that the lord of a manor cannot prescribe for a fine payable by every tenant within the manor who marries a daughter without the lord's licence: "for none ought to make such fine but only villeins." Coke's gloss on this is as follows: "that is, either villeins of blood, or freemen holding in villenage or base tenure." Comparing Bracton's more explicit statement, I think Littleton must have meant to exclude, not to include,

freemen holding in villenage. But if Coke is wrong, it is only on a detail. When we come to Blackstone (Comm. 2, 92-96) the confusion is complete. He writes as if wholly unaware that *villanus* ever meant anything but a personal serf: the *liber homo tenens in villenagio* somehow escapes his notice altogether, and the early copyholder is represented by him as an enfranchised serf and nothing else. Blackstone's confused and misleading account has been adopted, so far as I know, by all modern text-writers before Mr. Kenelm Digby, who, going back to Littleton and Bracton, restored the distinction which Blackstone had obscured. He would have done still better, I venture to think, if he had more pointedly called attention to it.* The blundering of Blackstone's Commentaries on this point is the more remarkable, inasmuch as his Considerations on Copyholds show that he at one time read and to some extent appreciated the earlier authorities. Putting the tract and the Commentaries together, his theory, so far as he had one, appears to have been that personally free men holding in villenage existed, but were a very small class, and were ultimately represented by the customary tenants not said to hold at the will of the lord; that the ordinary copyholder always represented a *nativus*; and that the tenure of the *nativus* was not only burdensome but wholly precarious until long after the Conquest. This would be as pretty a theory as another if it were not flatly contradicted by the facts, as it is the moment we go at all below the surface.

As to the personal condition of the serfs, modern scholars seem pretty well agreed that legally it might have been one of great hardship, but in practice they were for the most part not so very badly off. The least favourable view of their position I have met with is Nasse's, the most

* Mr. Taswell-Langmead has done this in his Constitutional History, pp. 291-300, Second Edition.

favourable, Mr. Larking's (Domesday of Kent, note 57) and Mr. Thorold Rogers' (History of Prices, vol. 1). These last writers appear, however, as much concerned, or more, to make out the state of the modern labourer worse, as to make out the state of the old *nativus* better, for Mr. Thorold Rogers certainly underrates the positive evidence that personal servitude, as distinct from attachment to the soil, was known long after the Conquest. For example it was elaborately discussed in 1302 whether a neif marrying a free man became free absolutely or only during the coverture (Y. B. 30 & 31 Ed. 1, p. 164). Again, in 1305, it is pointedly stated by the Court, the question being whether free or villein service is due from certain land, that a plea of the tenant's personal freedom is irrelevant as regards the land (Y. B. 33 Ed. 1, p. 10). Probably it was not common for serfs to be sold apart from the land, but there is no doubt that it was sometimes done (Madox, Form. Anglic. nos. 756-762). In the absence of evidence it would be a plausible theory that the ignorance or carelessness of Norman surveyors and judges confused the lowest classes of free men with the serfs, in which process the dependent free man lost something, but the serf who formerly had no rights at all ultimately gained much. Such a view is taken by Professor Stubbs (Const. Hist. I., 429) and also by Mr. Freeman. But the evidence shows a displacement and shifting rather than a confusion of the names, and possibly to some extent the actual state, of different classes, a *Standesverschiebung* as one might say in German. In the Exchequer Domesday we find on the manors of St. Paul's four distinct kinds of tenants, Villani, Bordarii, Cotarii, Servi. In the Domesday of St. Paul's, A.D. 1222, or in round numbers a century and a quarter later, we find Tenentes of several descriptions (libere tenentes, ten. per vilenagium, ten. terras operarias, ten. de terra assisa, and others), Cotarii, and Nativi. Archdeacon Hale's inference

is best given in his own words. "The ancient names, that of the Cotarii excepted, had, as it appears, fallen into desuetude; the relations, however, in which the services and persons of the Libere tenentes, the Tenentes terras operarias, and the Nativi, stood with respect to each other, and to the lord of the manor, are so distinctly marked as to leave but little doubt that in those three classes we have the representatives of the Villani, Bordarii, and Servi of the earlier age, under titles of a higher order, and which less plainly indicated the servile character of the services which were due" (Introd. to Domesday of St. Paul's, p. xxvi). It seems hardly rash to suppose that in the relatively favourable case of tenancy under an ecclesiastical corporation there had been some real improvement in the condition of every class of tenants. Anyhow there is the fact that in the thirteenth century the minuter distinctions which the Conquest might be supposed to efface were as far from having disappeared as ever, and went on under changed or shifted names. It by no means follows, of course, that all these terms imply differences of personal status. It is at least doubtful whether *bordarius* and *cotarius* signify anything but the general nature and size of the holding. But the leading types are well enough marked. In the eleventh century there was the free man in the fullest sense compatible with having a lord at all, who might "go where he would with his land." Then there was the dependent free man who might seek a new lord if he chose, but at the cost of leaving the land: "potuit ire quo volebat, sed non cum terra." Such are the *coliberti* of Domesday in Dorset, elsewhere called "sokemen" (Eyton, p. 46).^{*} Then we have the still more dependent

^{*} Mr. Eyton treats the *villani*, in Dorset at any rate, as an unfree class; but I fail to see why. Doubtless they were inferior to the *censores*, who already paid a fixed money rent for all service; but payment of labour-rents is quite compatible with personal freedom, otherwise no free man could ever have held in villenage.

holder (*ascriptitius* in the language of the 12th-13th century authorities, such as Dial. Scacc. II., 14), who cannot quit the land without the lord's consent. Last of all comes the thrall or *servus*. In the thirteenth century, I apprehend, these distinctions were by no means out of use, except that the power of seeking a new lord "cum terra sua" had disappeared as being repugnant to feudal principles, and was replaced by the more convenient power of alienating the land to a purchaser. The *liber homo*, *ascriptitius*, and *servus*, were still separate and defined conditions of men. The "ascriptitii qui villani dicuntur" of Dial. Scacc. I., x., seem to be not serfs but degraded free men. Again, we know that villenage by blood, as distinct from villein or customary tenure, existed and was recognised not only in books but in practice down to the seventeenth century. "Queen Elizabeth in 1574 issued a commission for the enfranchisement of most of the bond-servants in the manors belonging to the Crown. And there is a case reported as late as the 15th year of James I. in which an issue as to villenage was tried" (Elton, "Custom and Tenant-right," p. 29). In the face of this it is impossible to hold that the sections of Littleton on villenage, for example, are the mere survival of legal pedantry describing obsolete institutions as if they were still alive.

Thus much of the persons. Now for the tenure. It should really be needless at this day to contradict Blackstone's story that all our customary tenures were invented after the Conquest by the more or less capricious indulgence of the lords of manors. Only Blackstone's story was adopted in unquestioning faith by Mr. Joshua Williams (in days long before he learnt of the historians and wrote his excellent book on "Rights of Common"), and so continues, it must be presumed, to be taken for gospel by the majority of law students. Therefore it may be worth while to recapitulate the facts.

1. There is no reason whatever to suppose that the actual tillers of the land were materially disturbed by the Conquest, except where, as in Yorkshire, the land was harried as a punishment for stubborn resistance.

2. Customary tenants are, in point of fact, found existing from Domesday till now without any discontinuous change in their tenure or its incidents: unless we are to count for such the final allowance, temp. Ed. IV., of their right to maintain their title in the King's Courts even as against their own lord.

3. The customs themselves bear every mark of archaic origin. Transfer by symbolic ceremonies; a variety of rules of descent, showing affinities to early customs preserved in other parts of Europe; and the record and attestation of title by the manorial courts, which, as a rule, if not always, represent ancient popular courts; all these things point not to feudalism or to usages springing up under feudalism, but to a state of society far older.

As to symbolic transfer, and the strange assertion of Sohme that there is no evidence of it in England before the Norman Conquest, I take this occasion to add that I have been guided by a note of Mr. Lodge's (*Essays in A. S. Law*, p. 102) to half-a-dozen examples in the *Codex Diplomaticus* itself of similar character to that which I quoted in my last paper (*Law Magazine and Review* for February, 1882) from Professor Stubbs. The charters are numbered 12, *37, 104, 114 (where a sod from the place is expressed to be delivered along with the book), *177, 1019 (in recital of an earlier grant). Two of them (here also noted by asterisks) are marked by Kemble as forgeries, but they are good enough as evidence that the like incident occurred in genuine originals which the forger was imitating.

4. The country where common fields abound, as we learn from the facts collected and discussed by Nasse, is also the country of small copyholds. We know that

common fields represent a primitive system of agriculture. If copyholds equally represent a primitive system of tenure, it is natural that where the one persists the other should persist also. If, as the popular account would have it, copyholds are of post-Norman origin, the coincidence is inexplicable.

When Sir Edward Coke said that copyholders come of an ancient house, he spoke more truth than he knew. The ancient customary holders of land who were not great men enough to hold their estates by charter before the Conquest and have them confiscated after it are represented by the modern copyhold tenants. I do not say that in every case copyhold is an ancient customary holding. It is possible that servile tenements of the most precarious kind may, in the course of the middle ages, have grown to some extent into customary estates. Nay, I think there is one class of copyholds which may with considerable probability be referred to such an origin, the copyholds of so-called imperfect tenure which are still frequent in the western counties (Elton, "Custom and Tenant-right," p. 63). These are the copyholds for lives or years where the fines are still uncertain, and there is no strict right of renewal: a kind of estate which, in Mr. Elton's words, "by the severity of the lord's exactions and the recurrence of a servile phraseology is shown to have descended from the precarious holdings of the *natives* who could call nothing their own." Long as it has taken to establish even an inchoate tenant-right, I should be disposed to put back the origin of these holdings far beyond the Norman Conquest. They prevail only in the West of England, if indeed they are found at all elsewhere. There is no reason why this should be so if they began as the holdings of English serfs or degraded free men. But there is every reason why it should be so if they began as the holdings of a conquered British population who remained as the serfs and

tenants at will of the English invaders on the land which had formerly been their own. In the east and south-east the British tillers of the soil were slain or dispersed. The remnant who may have been reduced to servitude left no distinct traces on the new form of society. In the west the English conquest was milder and more gradual. Still it was a conquest by the strong hand, and the relation of mere sufferance which Blackstone imagined between the Norman lord and the English customary tenant is like enough to have really existed between the victorious English settler and the Welshmen who were the captives of his spear. It seems a fair conjecture that the servile holdings of the West-Welsh, little or not at all affected by the Norman conquest, have all these centuries been growing into what we now know as copyholds of imperfect tenure. The proof of this, if proof be possible, would consist in finding specifically Celtic attributes (not merely such points of archaic laws and manners as may be found anywhere by going far back enough) in the customs of such copyholds. This is a matter for Celtic antiquarians rather than for English lawyers, and I know not how far it could be carried.

In the case of the peculiar "conventional" holdings of the Cornish mining country, where the tenant has an inheritable interest, but must be re-admitted every seven years, something like proof is attainable. This custom, fully described in Concanen's special report of *Rowe v. Brenton*, presents distinct analogies to the customs of Brittany.* Considering, again, the extreme antiquity of tin mining in Britain, it seems at least probable that the "tin-bounding" custom of Cornwall, and the similar customs which exist in the mining district of Derbyshire, come down to us from a time earlier than the English occupation; and, indeed,

* Coutumier Général, 4, 409 (usances locales du domaine congéable de Cornouaille).

when we remember that in Cornwall the English occupation is allowed to have been of the most superficial kind, even by those who are least favourable to the preservation of Celtic elements elsewhere, there is hardly room for two opinions on this point.

What is above suggested as to the origin of the imperfect copyholds of the west of England may perhaps be strengthened by consideration of the manner in which personal villenage was distributed over the country at the date of the Domesday survey. The Abstract of Population in the second volume of Ellis's Introduction gives the facts ready to hand. We find that the proportion of *servi* to the whole population steadily diminishes as we go from the southern and western parts northward and eastward. In Cornwall and Gloucestershire, the former still really a West-Welsh country, the latter still half-Welsh, the *servi* are almost one in four. In Devonshire they are little short of one-fifth, in Shropshire over one-sixth, in Dorset and Somerset not much under, and in Hampshire they are over one-seventh; in Worcestershire and Wiltshire it is about the same.* As we cross from west to east there is a notable change; the average in the southern midlands, such as Berks, Oxfordshire, Warwickshire, is roughly one-eighth. As we go on to Leicestershire, Nottinghamshire, Staffordshire, Norfolk and Suffolk, we find the serfs ten per cent. of the population at most. In Derbyshire there are hardly any serfs, and in Lincolnshire, Huntingdonshire, Rutland, and Yorkshire there are none at all. In the north-west, again, Cheshire shows a small proportion, less than one-twelfth. In the south-east the distribution seems irregular; in Essex the serfs are about one-ninth, in Kent something less than one-tenth, in Surrey something more, while in Sussex they

* In Herefordshire the proportion is evidently high, but the numbers seem to be uncertain.

are less than one-twentieth. Local accidents of forest and fenland may in part account for these diversities; the less profitable soil would be more in servile occupation, and serfs would be employed as herdsmen in the uncleared or half-cleared forests. In any case the average is much below that of the western counties. In one word, the serfs are fewer in proportion as the English settlement of the country is more complete. This decreasing ratio from west to east cannot be an accident, and we are led to infer that both the descent and the tenures of the *nativi* represented by the present "imperfect copyholders" of the west were not English but Welsh.*

How the king's courts came to assume, as they did at least as early as the beginning of the fourteenth century (Y. B. 30 & 31 Ed. I., 168), that there was no villenage in Kent, is an unsolved riddle. The doctrine went so far that a man's freedom was established by showing that any of his ancestors was born in Kent, "*quia esset impossibile servum procreare liberum*" (Y. B. 33 Ed. I., 15). But in Kent itself such was not the opinion or practice, for villenage certainly existed there much later, as Somner has shown (Treatise on Gavelkind, pp. 73-75); to say nothing of the difficulty of accounting for the total disappearance within two centuries or thereabouts of the servile class registered in Domesday. The legal doctrine which no less certainly was acted upon by the courts out of Kent is a curious example of the rapid growth and acceptance of fictions even when the facts contradicting them are not remote or difficult of access.

F. POLLOCK.

* There is nothing I know of to exclude the possibility that the Welsh themselves before the English invasion had serfs, who may not have been Celts or even Aryans, or that these people left sensible traces in the population. And Mr. Elton (*Origins of English History*, ch. viii.) has collected a mass of facts tending to show that the preference of younger to elder sons, which in this country survives in the form of borough-English, is derived from non-Aryan sources. But for the present purpose I keep within historic limits.

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

BAIRD, John Forster, of Bowmont Hill, Northumberland, and of the Inner Temple, Esq., Barrister-at-Law, aged 59. Called 1850. *March 15.*

BARBER, Charles Chapman, M.A., of Lincoln's Inn, Esq., Barrister-at-Law. Mr. Barber, who was called in 1833, and eventually became "Father of the Equity Bar," was of St. John's College, Cambridge, where he graduated as 9th Wrangler, 1833, proceeding M.A. in 1836. *Feb. 5.*

BATES, Thomas, M.A., of Heddon and Aydon, Northumberland, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 71. Mr. Bates, who was eldest surviving son of John Moore Bates, Esq., of Heddon, was called to the Bar in 1839. He was M.A., and formerly Fellow, of Jesus College, Cambridge, where he graduated as 8th Wrangler in 1834. He succeeded his brother, John Moore Bates, Esq., M.D., in the Heddon and Aydon estates in 1866, and was J.P. for Northumberland. *Jan. 30.*

BIRD, Edward Sumner, of Lincoln's Inn, Esq., Barrister-at-Law, aged 26. Mr. Bird, who was called in 1881, was formerly of Balliol College, Oxford (4th Class, Jurisprudence, 1880), and was eldest son of the late C. J. Bird, Esq., H.E.I.C.S., of Little Hatherley, Cheltenham. *Jan. 21.*

BLACKWOOD, James Stevenson, D.D., LL.D., formerly of the King's Inns, Barrister-at-Law, aged 76. Dr. Blackwood, who was son of P. Blackwood, Esq., was called to the Irish Bar in 1833, and subsequently graduated at Trinity College, Dublin; B.A., 1844; LL.B., and LL.D., 1845; B.D. and D.D., 1857. He took orders in 1847, and served as a Military Chaplain during the Crimean War. *March 27.*

BOUGHEY, Arthur, Esq., Solicitor (Irel.), aged 30. Admitted, 1874. *Nov. 27.*

BOVILL, William John, Esq., Q.C., F.S.S., Bencher of Lincoln's Inn, aged 71. Mr. Bovill, who was called to the Bar by the Honourable Society of the Middle Temple in 1847, was admitted *ad eundem* at Lincoln's Inn, in 1850. In 1872 he took silk, and became one of the Masters of the Bench of Lincoln's Inn. *March 3.*

BROWNRIGG, William Henry, Esq., Solicitor (Irel.), of Elsinore, Bray, Co. Wicklow. Admitted, 1846. *Jan.* 27.

BURGASS, Richard, of the Middle Temple, Esq., Barrister-at-Law, Chief Judge, Small Causes Court, Madras, aged 71. Called to the Bar, 1839. *Jan.* 28.

BUSK, Hans, D.C.L., LL.D., of Culverden Grove, Kent, and Nantmel, Radnorshire, and of the Middle Temple, Esq., Barrister-at-Law, aged 66. Captain Busk, who held his commission in the 15th Middlesex Rifles, and was well known for the part which he took in the formation of the Volunteer Forces in 1858, was M.A. (1844), and LL.D. (1873), of Trinity College, Cambridge (B.A., 1839), and received the honorary degree of D.C.L. from the University of Oxford. He was called to the Bar in 1841, and was D.L. for Radnorshire, and D.L. and J.P. for Middlesex. His father, Hans Busk, Esq., of Glenalder, High Sheriff of Radnorshire, 1837, was grandson of Jacob Hans Busche, or Busk, who came from Sweden to England in 1712, and was naturalised, 9 Geo. II. *March* 11.

BUTLER, George Slade, Esq., F.S.A., Solicitor, Town Clerk of Rye, aged 61. Admitted, 1843. *April* 11.

CARMICHAEL, George Thomas, Esq., Solicitor (Irel.), aged 26. Youngest son of the late George Carmichael, Esq., Solicitor, Kingstown. Admitted, 1876. *Nov.* 29.

CATTERALL, Joseph, of the Middle Temple, Esq., Barrister-at-Law, aged 69. Mr. Catterall, who was called to the Bar in 1845, had been for many years Recorder of Wigan. *March* 6.

CHAPMAN, Hon. Henry Samuel, of the Middle Temple, Barrister-at-Law, formerly Member of the Legislative Council, Victoria, Australia, aged 78. Mr. Chapman, who had held high Parliamentary and Judicial offices in Australia and New Zealand, was called to the English Bar in 1840. He was a Judge, Supreme Court, N.Z., 1843-52; Colonial Secretary, Van Diemen's Land, 1852; M.L.C., Victoria, 1855; Attorney-General, Victoria, 1857, and again, 1858-9; Acting Equity Judge, Supreme Court, Victoria, 1862-3. Mr. Chapman was also for some years Law Lecturer in the University of Melbourne. *Dec.* 27.

CHARLES, George, B.A., of Lincoln's Inn, Esq., Barrister-at-Law, aged 48. Mr. Charles, who was called in 1860, was of Exeter College, Oxford. *March* 3.

COCHRANE, George C., Esq., Solicitor (Irel.), Armagh. Admitted, 1858. *Jan.* 21.

CRIPPS, William Charles, Esq., Solicitor, Tunbridge Wells, aged 51. Admitted, 1852. *Feb. 22.*

DAVENPORT, John Merrick, Esq., F.S.A., Solicitor, Clerk of the Peace for Oxfordshire, aged 72. Mr. Davenport, who was admitted in 1867, was author of "Annals of Oxfordshire," and other works. *Jan. 31.*

DAVIS, Gateward Coleridge, of the Inner Temple, Esq., and of the New South Wales Bar, Barrister-at-Law, aged 48. Mr. Davis, who was eldest son of Rt. Rev. D. G. Davis, D.D., first Bishop of Antigua, was called to the English Bar in 1860. *April 13.*

DAVY, Henry, Esq., Solicitor, Ottery St. Mary, aged 73. *April 9.*

DENNIS, William, Esq., Solicitor, an Alderman, and formerly Mayor of Northampton, aged 65. Admitted, 1838. *Jan. 29.*

DICKINSON, Sir John Nodes, Kt., M.A., formerly Senior Puisne Judge, and Acting Chief Justice, Supreme Court, New South Wales, aged 75. Sir John, who was son of Staff-Surgeon Dickinson, was of Gonville and Caius College, Cambridge (B.A., Senior Optime, 1829; M.A., 1832), was called to the Bar by the Hon. Society of the Inner Temple in 1840, and received the honour of knighthood in 1860, when appointed Acting Chief Justice, having been a Puisne Judge since 1844. *March 15.*

ELDERTON, Henry Merrick, Esq., Solicitor, aged 67. *Feb. 17.*

FEGAN, Hugh James, Esq., Solicitor (Irel.). Admitted, 1864. *April 6.*

FLEMING, John, Esq., Solicitor (Irel.), aged 76. *Nov. 29.*

FORMAN, John, Esq., W.S. (Scot.), aged 44. Admitted 1862. *Feb. 18.*

FRAZER, John, B.A., of the King's Inns, Esq., Barrister-at-Law. Called, 1845. B.A., Trinity College, Dublin, 1842. *March 29.*

GEE, Alfred William, of the Inner Temple, Esq., Barrister-at-Law, aged 32. Called, 1879. *Feb. 23.*

HADDEN, William, Esq., Solicitor (Scot.), Haddington. Admitted, 1859. *Feb. 7.*

HARRIS, Joseph, Esq., Solicitor, Leicester, formerly President of the Leicester Law Society, aged 84. Admitted, 1821. *Feb. 22.*

HEATHER, James, Esq., Solicitor, aged 72. Admitted, 1846. *Feb. 9.*

HILDER, Edward Augustus, Esq., Solicitor, Gravesend, and J.P., aged 70. Admitted, 1836. Youngest son of John Hilder Esq.,

of Old Place, Sandhurst, Kent. Mr. Hilder held the offices of Coroner for the borough of Gravesend and High Bailiff of the Gravesend and Dartford County Courts, and was J.P. for the borough of Gravesend. *March 21.*

HOARE, Edward, Esq., Solicitor, aged 51. Admitted, 1861. *March 11.*

HOLROYD, Hon. Douglas Edward, M.A., of the Inner Temple, Barrister-at-Law, aged 47. Called 1863. Educated at Eton; B.A., Ch. Ch., Oxon., 1857. Youngest son of George, second Earl of Sheffield, and brother and heir presumptive of the present Earl. *Feb. 9.*

HOPE, James, Esq., W.S. (Scot.), Deputy Keeper of the Signet, aged 78. Mr. Hope, who was admitted in 1828, was last surviving son of Right Hon. Charles Hope, Lord President of the Court of Session. *Feb. 14.*

HORRY, Sidney Calder, M.A., of Gray's Inn, Esq., Barrister-at-Law, aged 74. Mr. Horry, who was M.A. of the University of St. Andrews, was called to the English Bar in 1835. *Mar. 4.*

HOWES, Richard, Esq., Solicitor, Northampton, aged 50. Admitted in 1853. *Mar. 26.*

HUGHES, William Bulkeley, of Plâs Coch, and of Lincoln's Inn, Esq., Barrister-at-Law, M.P. for Carnarvon, aged 85. Mr. Bulkeley Hughes, who was educated at Harrow, and was called to the Bar in 1825, was eldest son of Sir William Bulkeley Hughes, of Plâs Coch. He was M.P. (Liberal) for the Carnarvon boroughs, 1837-59, and again from 1865 until his death, being in fact, says the *Times*, the "Father of the House of Commons." He was D.L. and J.P. for Carnarvonshire and Anglesea, and served the office of High Sheriff of Anglesea, in 1861. Mr. Hughes was descended from Hugh Hughes, of Plâs Coch, High Sheriff and M.P. for Anglesea, Attorney-General for North Wales, and a Bencher of Lincoln's Inn in the reign of Elizabeth. *Mar. 8.*

HUNTER, Harry Veitch, Esq., Solicitor (Scot.), aged 49. Admitted, 1860. *Feb. 7.*

JEFFERSON, Thomas Trafford DUNNINGTON-, M.A., LL.M., of the Inner Temple, Esq., Barrister-at-Law, aged 29. Mr. Jefferson, who was younger son of the late Rev. Joseph Jefferson, of Thicket Priory, Yorkshire, was of Trinity College, Cambridge, B.A. (Senior Optime), 1875; M.A., 1878, and was called to the Bar in 1878. *April 1.*

JORDAN, Edmund, of the King's Inns, Esq., Barrister-at-Law. Called, 1845. *Mar.* 8.

KNOWLES, Richard Brinsley, of the Middle Temple, Esq., Barrister-at-Law, aged 61. Mr. Knowles, who was the last surviving son of James Sheridan Knowles by his first marriage, was called in 1843. He edited the *Chronicon Johannis de Oxenides* for the Master of the Rolls, and was at one time editor of the *London Review*. *Jan.* 28.

LANE, Alfred, Esq., Solicitor, aged 34. Admitted, 1871. *March* 14.

LEE, Charles Marsh, Esq., Solicitor, Salisbury, aged 65. Mr. Lee, who was admitted in 1844, had for twenty-six years held the office of Town Clerk of Salisbury. *Feb.* 19.

LEEMAN, George, Esq., Solicitor, York, aged 72. Mr. Leeman, who was admitted in 1835, had been thrice Lord Mayor of York, and was Senior Alderman. He was M.P. (Liberal) for York, 1865-8, and 1871-80, when he was succeeded by his son, the sitting junior member for that city. *Feb.* 25.

LESLIE, Thomas Edward Cliffe, LL.B., of the King's Inns, Esq., Barrister-at-Law, aged 55. Mr. Leslie, who was Professor of Jurisprudence in the Queen's University of Ireland, was second son of Rev. Edward Leslie, Rector of Annahilt, Co. Down, Prebendary and Treasurer of Dromore. He graduated as Scholar of Trinity College, Dublin (B.A., 1847; LL.B. 1851), and was called to the Irish Bar in 1850. *Jan.* 29.

LUCAS, Ernest Frederic Bourne, Esq., Solicitor, Louth, aged 30. Admitted, 1873. *Jan.* 26.

LYNDON, William P., Solicitor (Irel.), aged 30. Admitted, 1874. *Feb.* 17.

MCBLAIN, Frederick William, LL.D., of the King's Inns, Esq., Barrister-at-Law. Dr. McBlain, who was called to the Irish Bar in 1845, and was for some time a member of the North-East Circuit, passed a distinguished career at Trinity College, Dublin, as Scholar, 1840; B.A., 1842, Senior Moderator and Gold Medallist in Classics, Ethics, and Logic, LL.B. and LL.D., 1857. His first legal appointment was that of Crown Prosecutor for Co. Armagh. In 1859 he unsuccessfully contested Newry, and in 1874 the County of Armagh, as a Liberal candidate. After having filled, as *locum tenens*, the County Court Judgeship of County Down, Dr. McBlain was named one of the Divisional Police Magistrates for Dublin, and during the very short time he had held that post had

proved himself, says the *Irish Law Times*, a sound, zealous, and firm administrator of the law. *Feb. 7.*

MCCARTHY, Denis Florence, M.R.I.A., of the King's Inns, Esq., Barrister-at-Law, Honorary Professor of Poetry in the Catholic University of Ireland, aged 62. Called to the Bar in 1846. *April 7.*

MCLEAN, Robert F., S.S.C. (Scot.). Admitted, 1871. *April 10.*

MAUNSELL, John, of Oakley Park, Celbridge, Co. Kildare, and of the King's Inns, Esq., Barrister-at-Law, aged 71. B.A., Trinity College, Dublin, 1832. Called 1836. J.P. for Co. Kildare, and High Sheriff, 1877. *March 29.*

MITCHELL, Sydney John, Esq., Solicitor, Solihull, Warwickshire, aged 53. Admitted in 1851. *March 22.*

MULHALL, John Bernard, Esq., Solicitor (Irel.), aged 64. Admitted, 1846. *April 7.*

MURPHY, James, Esq., Solicitor (Irel.). Admitted, 1853. *Jan. 24.*

NAYLOR, Thomas Hacke, M.A., of the Inner Temple, Esq., Barrister-at-Law, aged 73. Mr. Naylor, who was of Queens' College, Cambridge (B.A. 1838; M.A. 1841), was son of the late T. H. Naylor, Esq., of Carisbrooke, I.W., and was called to the Bar in 1841. In 1866 he was appointed Recorder of Sudbury. He was J.P. for the borough of Cambridge, of which he had twice been Mayor. *March 3.*

NEWMAN, John, of Combe Martin, Co. Devon, and of the Middle Temple, Esq., Barrister-at-Law, aged 76. Called, 1834. *April 6.*

NICHOLSON, Henry, Esq., Solicitor, Clerk to the Commissioners for Taxes, City of London, aged 47. Admitted, 1858. *Feb. 19.*

PEREIRA, Francisco Evaristo, F.R.G.S., of Gray's Inn, Esq., Barrister-at-Law, aged 48. Mr. Pereira, who was formerly a member of the Legislative Council of the Straits Settlements, Singapore, was called to the Bar in 1865, having been admitted a Solicitor at Singapore in 1857. *Dec. 30.*

PHILLIPS, Thomas, Esq., Solicitor, Plymouth, aged 55. Admitted, 1848. *Feb. 24.*

PIKE, Warburton, of the Middle Temple, Esq., Special Pleader, aged 64. Youngest son of William Pike, Esq., of Bucknowle, Co. Dorset. Mr. Pike was educated at University College, London, and obtained his certificate to practice as a Special Pleader in 1840. *Jan. 29.*

RICE, Henry Edridge, Esq., Solicitor, aged 61. Admitted, 1843. *Jan. 22.*

RODGERS, Charles, Esq., Jun., Solicitor, Sleaford, aged 34. Admitted, 1871. *April 17.*

SALMON, Thomas Deere, M.A., of Penllyne Court, Glamorgan-shire, and of Lincoln's Inn, Esq., Barrister-at-Law, aged 62. Mr. Salmon, who was called to the Bar in 1844, was of Exeter College, Oxford (B.A., 1840), and was J.P. for Glamorganshire. He was the last surviving son of William Salmon, Esq., D.L., J.P., by Hester, daughter and heiress of Reynold Thomas Deere, Esq., of Penllyne Court. *Feb. 20.*

SHIRLEY, Arthur James, Esq., Solicitor, Doncaster, aged 28. Admitted, 1876. Youngest son of W. E. Shirley, Esq., Town Clerk, Doncaster, and educated at Rugby. Appointed Coroner for Doncaster, 1879. *Jan. 19.*

STEUART, John, of Dalguise, Esq., M.A., Edinburgh, W.S. (Scot.), D.L. & J.P. for Perthshire, aged 82. Eldest son of Charles Steuart, ninth of Dalguise, whom he succeeded in 1826, Mr. Steuart was admitted a Writer to the Signet in 1825. Going out to the Cape of Good Hope, he filled the office of High Sheriff in 1829, and became Master of the Supreme Court there. The Steuarts of Dalguise in Perthshire descend from the second son of Sir John Steuart of Arntullie and Cardneys, youngest son of King Robert II. of Scotland by Mariota de Cardney. *Dec. 29.*

STRANGWAYS, Thomas Henry, Esq., Solicitor, aged 67. Admitted, 1837. *Feb. 8.*

TAYLOR, Richard Stephens, Esq., Solicitor, aged 74. Admitted, 1832. *April 11.*

THIMBLEBY, Thomas, Esq., Solicitor, Spilsby, aged 68. Admitted, 1837. *Jan. 27.*

ULLATHORNE, George Hutton, Esq., Solicitor, aged 63. *March 15.*

UNDERHILL, Henry, Esq., Solicitor, Town Clerk of Wolver-hampton, aged 59. Admitted, 1847. *Feb. 26.*

VAWDREY, W. Wyatt, Esq., Solicitor, Manchester, aged 28. Mr. Vawdrey, who was the younger son of Benjamin Llewellyn Vawdrey, Esq., of Tushingham Hall, Malpas, was admitted in 1876. *Feb. 8.*

WOODCOCK, Thomas, Esq., Solicitor, Haslingden, Lancashire, aged 71. Son of William Woodcock Esq., of Holcombe, Lancashire. Mr. Woodcock was admitted in 1833. *March 7.*

WRIGHT, John Robert, of the Inner and Middle Temples and of The Craigan, Ifield, Sussex, Esq., Barrister-at-Law, aged 39. Called in 1865. *April 5.*

Quarterly Notes.

Among the various suggestions which have been made for utilising the House of Lords to a greater extent than under the existing system, it has been proposed to give that House a larger share in initiating Legislation. Some of the Bills recently introduced in the Upper House grapple with their subject in so direct, concise, and practical a manner as to seem to afford grounds for believing that our Legislation would gain by such a change as above-mentioned. The Council of the Social Science Association has adopted a memorial in favour of one of these Bills, Lord Selborne's Married Women's Property Bill. Two other Bills, introduced by Earl Cairns, have also been, we understand, under consideration by the Standing Committee of the Association. Whatever opinions may be formed by different persons as to the merits of the Bills in question, we cannot but regard their introduction in the Upper House as a healthy sign of Legislative progress.

We are glad to be able to award the same praise for terseness and practical utility to a Bill introduced in the Lower House by Mr. Borlase, M.P. for East Cornwall, "for the better Preservation of the Ancient Parochial Registers of England and Wales." The need for such an Act as is here contemplated is great and pressing, and is daily growing greater and more pressing. Readers of this *Review* have already been placed in possession of the facts in an exhaustive article (*Law Magazine and Review*, No. CCXXVIII., for May, 1878) by Mr. T. P. Taswell-Langmead, B.C.L., who had long ago, in the pages of *Notes and Queries*, and in a Pamphlet on the subject,

advocated the centralisation of our Ancient Parish Registers. The Bill prepared by Mr. Borlase tells its own tale briefly, but forcibly, and we trust to see it pass the ordeal of "obstruction" with flying colours. It cannot too often be repeated that what has been done in Scotland and in Ireland can be done in England and Wales. And in the absence of the modes of substantiating pedigrees open to the landed classes in Scotland through the operation of Retours, Sasines, and Charters, the need for placing the Ancient Parochial Records of England in safety, under the custody of the Master of the Rolls, seems to be still more emphatically a crying need for England.

The memory of Dr. Bluntschli should be held in honour among all who appreciate the value of the studies to which his life was devoted. We are glad to see by the current number of the *Revue de Droit International* (1882, No. II.) that a goodly list of National Committees has been formed, in union with the Provisional Executive Committee, which consists of Professor Von Holtzendorff, of Munich, Professor D'Orelli, of Zurich, Professor Rivier, of Brussels, and Professor Schulze, of Heidelberg, itself both a practical and a representative body.

The National Committees include a large German list, amongst whose names we note the Vice-President of the Baden Synod, a meeting of which, it will be remembered, was the very last public gathering attended by the lamented Professor. There is naturally a considerable array of Professors and Publicists on the part of Germany, including Von Bar, of Göttingen, Gessner, of Dresden, Gneist, of Berlin, Loening, of Heidelberg, Von Maurer, of Munich, and Count Von Wartensleben, President of the Juridical Society of Berlin, who has himself been taken from among his colleagues, full of years, since the list was prepared.

Great Britain is well represented by the Right Hon. Mountague Bernard, Sir Travers Twiss, Professor Holland, and others; the Netherlands by Professor Asser; Russia by the well known Publicist, De Martens; Italy by Mancini, the veteran Jurist and Statesman; while Dr. Bluntschli's own *patria*, Switzerland, contributes, as was to be expected, some of the most prominent of her sons in the ranks of her Professoriate and in Political life, including Hilty and Koenig, Professors at Berne, Professor Hornung of Geneva, and several members of the Professoriate and Judicature of that Canton of Zurich to which Bluntschli devoted himself so zealously and so successfully as a codifier of her law. Belgium contributes the distinguished names of Rolin-Jacquemyns, Minister of the Interior, and Laurent, Professor at Ghent, while Professor Rivier may be said to occupy an international position, as a representative alike of Belgium and of Switzerland.

In the above sketch of the composition of the Committee we have only skimmed its cream, as it were. But we may add that Bankers and men of business appear on it no less than Jurists, Diplomats, and Statesmen, thus faithfully reflecting the many-sidedness of Dr. Bluntschli's mind and labours. All lovers of peace must wish success to the Bluntschli Stiftung, as a memorial of one whose last words were *Pax hominibus*.

We have already drawn attention to the valuable papers read by Sir Travers Twiss at the Cologne Conference of the Association for the Reform and Codification of the Law of Nations. In the *Report* just published for the Association (33, Chancery Lane), there will be found a full record of the numerous subjects of interest treated by a large and varied band of contributors to the work of the Conference. Among these subjects we may specially name Extradition, brought forward by Hon. David Dudley

Field; a Common Form of Bill of Lading, discussed in papers by Mr. Charles Stubbs, M.A., LL.D., and Mr. Richard Lowndes; The Recent Progress of Arbitration, of which an historical sketch was given by Mr. Henry Richard, M.P.; International Copyright, Literary, Artistic, and Industrial, treated by Mr. C. H. E. Carmichael, M.A., with reference to the Brussels Congress of Commerce and Industry, 1880, and the Draft Anglo-American Convention, still under consideration. A new question appears to us to have been brought to the surface by Dr. Barnard, President of Columbia College, U.S.A., who advocated Uniformity of Time-Standards. It is difficult to imagine ourselves deprived, even for high scientific purposes, of the "forenoon" and "afternoon," to which we have been so long accustomed.

We learn, with much pleasure, from the April number of the *Rivista Penale*, that its able editor, Professor Lucchini, of Siena, has enjoyed a two-fold success in a recent competition for the vacant chairs of Criminal Law at the University of Palermo, and at the Ateneo of Bologna. Chosen by both, Professor Lucchini has made his election in favour of Bologna. The distinguished position which Signor Lucchini has long held among Italian Penalists receives fresh illustration in this double election. We congratulate the Ateneo of Bologna on this latest addition to its Professoriate, and the *Rivista Penale* on the fresh laurels gained by its learned editor, who will, we trust, not find it necessary to relinquish his direction of the Review.

Reviews of New Books.

The Institutes of Justinian edited as a Recension of The Institutes of Gaius. By THOMAS ERSKINE HOLLAND, D.C.L., of Lincoln's Inn, Barrister-at-Law, Chichele Professor of Diplomacy and International Law, and Fellow of All Souls' College, Oxford. Second Edition. Oxford: Clarendon Press. 1881.

The natural way of learning all Arts and Sciences, says Sir George Mackenzie, of Rosehaugh, in the Letter Dedicatory prefixed to his *Institutions of the Law of Scotland* (Edinburgh, 1684), is to know, "first, the terms used in them, and the principles upon which they are founded, with the Origins of the one, and the Reasons of the other. A collection of these terms and principles is in Law called Institutions."

The most famous of such Institutions, the Institutes of Justinian, are here presented to the student by Professor Holland in a singularly elegant and convenient shape, and so edited as to show their intimate relation to the only less famous Institutes of Gaius.

The Earl of Middleton, to whom Sir George Mackenzie dedicates his own book, had, it appears, aptly observed that "Institutions are a Grammar." We have here, therefore, in Dr. Holland's *Institutes*, a Grammar of the Roman Law as it was both in the days of Gaius and in its later shape under the reforms of Justinian.

It would be difficult to over-estimate the importance to the student whether of Roman Law or of Roman History of being able at a glance to take in the old and the new Law, to compare Gaius with Justinian. This is what Dr. Holland's plan enables us to do, and this it is which places his edition in a niche by itself, and gives it a special value as a work ancillary to other editions of the Institutes, not prepared on this comparative method. While, however, the main object of Professor Holland's Recension is to set forth clearly the relation between the two great Institutional Treatises of the Roman juridical world, full justice is done to the writings of other Jurists of slightly lesser fame, who have left their traces more or less distinctly on Justinian's pages. The marginal references, therefore, will be

found to embrace the various works of nine Roman Jurists besides Gaius, of all of whom, as well as of their works, a brief account is given in the Introduction.

The minuteness with which Professor Holland distinguishes the text of Gaius from that of the Imperial revision is remarkable, and seems conscientious almost to a fault. For it extends even to portions of words, such as "po[terit]" and "po[test]" on p. 105, and "At[tiger]o" on page 153, and similarly elsewhere throughout the Institutes. This minuteness of accuracy, will, it is to be feared, be quite lost on the ordinary student, even for honours. But it is probable that the textual scholar was more in the learned editor's mind, when he determined upon this line of action, and such readers will no doubt be glad to have so continuous a chain of what may perhaps not inaptly be styled intellectual finger-posts.

The wave of revived study of Roman Law has passed across the Atlantic. During the course of last year lectures on Roman Law were given by a Leyden Jurist, Dr. Pincoffs, to so appreciative an audience of American law students that the result has been the creation of a permanent office of which the Lecturer has been appointed the first incumbent. Dr. Pincoffs had the opportunity of stating the case for the study of his subject as a necessary part of scientific juridical education, not only in class, but also in the pages of the *American Law Review* for September, 1881 (Boston: Little, Brown, & Co.). He was thus enabled to get a twofold hearing, and this fact probably contributed not a little to popularise the idea, and to help it to take root in the American mind. We cannot but believe that this is a healthy move for our Transatlantic cousins to have taken, and that it will tend directly to foster the growth of a more scientific education for the Bar in the United States. Our able contemporary, the *American Law Review*, and the American Bar Association have both devoted considerable time and space to the discussion of legal education, and we think we shall not be over-stating their respective conclusions if we say that they indicate strongly the necessity for a thorough reform. In this reform, we cannot now have any doubt, an increased attention to Roman Law will be a conspicuous feature. We therefore anticipate a demand for increased facilities for the study of Gaius and Justinian, and we shall expect to hear, ere long, that Professor Holland's edition of the Institutes will have become a household word in regions unknown to the Roman Eagles, and

will help forward the realisation of the great fact insisted upon by Sir George Mackenzie, that "the great principles of justice and equity are the same in all nations."

A Treatise on the Jurisdiction and Practice of the Admiralty Division of the High Court of Justice with an Appendix of Statutes, Precedents, &c. By EDWARD STANLEY ROSCOE, Barrister-at-Law. Second Edition. Stevens and Sons. 1882.

We are not surprised that Mr. Roscoe should have found the demand for his clear and useful *précis* of Admiralty Law, warrant him in bringing out an early second edition. Already favourably known by other works which implied similar powers, though on a lesser scale, the author's reputation has been well sustained in the fresh department of legal literature which he has here taken up. The comparatively short time which has elapsed since Mr. Roscoe's present Treatise first appeared has nevertheless given him no inconsiderable amount of additional matter to work in. Besides the English *causes célèbres*, some of which, e.g. the *Parlement Belge*, have received special treatment in the pages of this *Review* at the hands of Sir Travers Twiss, we observe that Mr. Roscoe has included leading American cases, distinguishing them by the letter (A). On some points there is still a field for further labours on the author's part. Thus, for instance, the account which he gives us of the Admiralty jurisdiction and practice in the Courts of the Channel Islands is confessedly meagre. It would be interesting to learn something definite of a practice which has descended to the present day in an uninterrupted line from the "Grand Coutumier" of Normandy, and which has been developed, we suppose we may assume, quite independently of English influences.

In regard to some of the Inferior Courts with which Mr. Roscoe deals, there have been important decisions since his book reached us. This is, of course, a difficulty with which no author can contend. But the language employed by Mr. Roscoe to define the powers of the City of London Court seems thoroughly in accordance with the judgment of Huddleston, B., in *Reg. v. The Judge of the City of London Court and Henry Covington*. Had a different decision been arrived at, indeed, it certainly appears to us that the City of London would have presented a distinct case of *anomia*. But it is now beyond question that

the Judge of the City of London Court has the Admiralty Jurisdiction attributed to that Court by our author at page 113. In his introduction, Mr. Roscoe gives a brief but interesting summary of the history of Admiralty Jurisdiction in England, and shows how the recent changes in our system have practically given a peaceful victory in their long-standing feud with the common law to the Civilians who practised in the Court of the Lord High Admiral, and who were learned in the Law of the Sea.

A Treatise on the Law and Practice of Agricultural Tenancies. By the late GEORGE WINGROVE COOKE. New Edition, in great part Re-written, by G. PRICE GOLDNEY, of the Western Circuit, and W. RUSSELL GRIFFITHS, LL.B., of the Midland Circuit. Stevens and Sons. 1882.

There was clearly need for a new edition of Mr. Wingrove Cooke's valuable work, and the manner in which the need has been supplied by Mr. Goldney and Mr. Griffiths cannot fail to render the Treatise, thus recast, a book of great practical utility to landlords and tenant-farmers, as well as to the Legal Profession.

The present Editors, while abstaining from any comments of their own upon the Law as it is, have provided ample materials for the consideration of points in which it is capable of improvement. They have also allowed us to retain the power of observing some of the author's own thoughts on the subject, in notes marked as having formed part of the first edition. Thus, at p. 149, we see that Mr. Wingrove Cooke tersely defined the position of things in North Wales as "High rents, poor farmers, and wretched farming, as a rule," and expressed strongly his opinion that it would be vain to interfere with the habits of the farmers there, unless the "whole system" was changed. The change suggested was a radical one; "larger farms and lower rents; new capital, new comforts, and new wants." The question thus incidentally raised is a wide one. Had Mr. Cooke been living now, he would probably have extended his formula to other parts of the country, far beyond the limits of North Wales. The very full and interesting information collected in the Report of the Committee of the Central and Associated Chambers of Agriculture, 1873-4, which was the basis of the Compensation clauses of the Agricultural

Holdings Act, 1875, is epitomised by Messrs. Goldney and Griffiths, and forms a most useful feature of their work. They also print the judgment of the Court of Exchequer, *per* Parke, B., in *Hatton v. Warren* (1 M. & W., 466), on account of its great importance in regard to the operation of the custom of the country, in cases of Lease or Special Agreement. The customs disclosed in the Report of the Chambers of Agriculture, and the force of which was clearly laid down by Mr. Baron Parke, are, as the Editors truly remark, very varying, and require to be carefully studied. They throw no small amount of light on the Social and Economical, no less than on the Political History of England, and they deserve the attention of all students of Ancient Law.

We anticipate a long life to Mr. Wingrove Cooke's Treatise, under the clear and careful editing of Messrs. Goldney and Griffiths.

The Practice of the Chancery Division of the High Court of Justice, and on Appeal therefrom. Being the Sixth Edition of *Daniell's Chancery Practice*, with alterations and additions and References to a Companion Volume of Forms. By LEONARD FIELD, EDWARD CLENNELL DUNN, and THEODORE RIBTON, Barristers-at-Law, assisted by WILLIAM HENRY UPJOHN, Barrister-at-Law. In two volumes. Vol. I. Stevens and Sons. 1882.

The Annual Chancery Practice. By THOMAS SNOW, M.A. of the Inner Temple, Esq., Barrister-at-Law; and HUBERT WINSTANLEY, of Lincoln's Inn, Esq., Barrister-at-Law. Maxwell and Son, and Henry Sweet. 1882.

Although constituting the Sixth Edition of Daniell's well-known "Chancery Practice," the alterations required in order to incorporate the new practice under the Judicature Acts, have been so numerous and extensive that the work before us may be regarded as substantially an original undertaking. Judging by the first volume now issued, the learned authors have spared no pains to make this new book of Practice as comprehensive in scope and as accurate in detail as that which has so long enjoyed an almost unique reputation as "Daniell's Practice." Indeed if any fault is to be alleged, it would be that the work is perhaps somewhat too exhaustive; a fault however which is on the right side in a book of Practice, which is not intended to be read

through, but to serve as a mine of information for ready reference whenever the Practitioner may have occasion to seek for guidance. The present volume comprises, in addition to introductory observations on the composition and machinery of the Supreme Court of Judicature, sixteen chapters. These are devoted, in successive order, to: The Commencement of an Action—Persons who may bring it—Persons against whom it may be brought—Parties—Proceedings on the part of Plaintiff previous to issue of Writ—The Writ of Summons—Appearance and Proceedings in Default of Appearance—Proceedings after Appearance and before Pleading—The Pleadings—Proceedings in Default of Pleading—Discontinuance and Withdrawal of Claim or Defence—Accounts and Inquiries—Evidence—Motion for Judgment—Trial and Hearing—Judgments and Orders. The body of the work is preceded by a useful Table of General Orders, Rules, Judges' Regulations, and Registrars' Regulations; a Table of Statutes, and List of Cases; while the Analytical Index, which covers over a hundred and seventy pages, is exceptionally full. We can congratulate the authors on having produced a well-written, clearly arranged, and eminently practical Treatise, which we doubt not is destined to meet with its due recognition at the hands of the Profession.

"The Annual Chancery Practice," by Mr. Snow and Mr. Winstanley, authors of the "Lancaster Chancery Practice," is a new venture of a somewhat novel character, alike in its design and in the low price at which it is published. In this latter characteristic, and in its general appearance, it somewhat resembles Sir William Charley's "Practice under the Judicature Acts," although its price, low as it is, still exceeds by a hundred per cent. that marvel of cheapness in legal literature with which the present Common Serjeant of the City of London astonished the publishers of the precincts of the Inns of Court. The "Annual Practice" differs materially in design from the new edition of "Daniell." It is, in fact, an annotated collection of all the Statutes, Orders and Rules, relating to the general Practice, Procedure, and Jurisdiction of the Chancery Division of the High Court, and on Appeal therefrom to the Court of Appeal. Part I. comprises the Statutes; Part II., the Rules of the Supreme Court; Part III., the Orders as to Court Fees and Stamps; Part IV., those sections of the Master in Chancery Abolition Act, 1852, the Rules of C. O. 35, and G. O., 27th May, 1865, and the Regulations of 8th August, 1857, with

other provisions and cases relating to Proceedings in Chambers; Part V. is devoted to proceedings in the Chancery Pay Office; and Part VI. contains a selection of the principal Forms. To this is appended a very useful Table of the Chancery Procedure Act, and Consolidated and General Orders issued previously to the Judicature Acts, and of the Regulations of 8th August, 1857, as to business in Chambers. The annotations, which are embodied in the text, are terse and to the point, and amply supported by references to cases and other authorities. The authors give evidence of having bestowed much well-directed labour in the compilation of the volume, and its annual re-publication, corrected up to date, will doubtless prove extremely useful to the Practitioner.

The Law of Compensation under the Lands Clauses, Railways Clauses Consolidation Acts, the Public Health Act, 1875, the Artizans and Labourers Dwellings Improvement Act, 1875, and other Acts, the Metropolis Local Management Act, &c. With a full collection of Forms and Precedents. By EYRE LLOYD, of the Inner Temple, Barrister-at-Law. Fifth Edition. Stevens and Haynes. 1882.

Since the first edition of this useful and now well-known work appeared, there has been a considerable mass of amending legislation on the subject, after the fashion which it seems to please us to pursue. Few are the Acts of modern times which have not a following of amending and interpreting Acts as large as the tail of the great chief Phairshon when he set out at the head of four-and-twenty men and five-and-thirty pipers!

Through the maze which is thus but too often the consequence, a clear-headed guide is needed. Such a guide will be found for the *Law of Compensation* in Mr. Eyre Lloyd, whose new edition is carefully brought down to date, and includes more than a hundred pages of Precedents, besides the text of the Acts of 1845 and 1875. In his discussion of the principles involved in the several Acts and in the decisions on them, Mr. Lloyd refers frequently to Scottish, Irish, Colonial and American cases. These will be found in not a few points to throw a valuable side-light on the binding cases, and it is well that Counsel should find ready to hand a suggestion of what may open up a new view that may ultimately find its way into English case-law. The volume, although much increased in its contents, remains of a convenient size for transport and reference in Court or on Circuit.

The Law relating to Building Leases and Building Contracts, with a full collection of Precedents, and the Statutes relating to Building. By ALFRED EMDEN, of the Inner Temple, Esq., Barrister-at-Law. Stevens and Haynes. 1882.

In this work Mr. Emden has collected and systematically arranged a mass of legal lore relating to Building Leases, Building Contracts, and generally to the improvement of Land by Buildings and their construction. The lawyer, the architect, and the contractor will here find brought into a focus and readily available, information which would, but for this convenient volume, have to be sought for in various quarters. The landowner, estate agent, and owner of house property will also each find it a handy book for reference whenever any of the constantly recurring questions connected with building from time to time arises. The striking fact that in England and Wales, during the decade 1871-1881 the number of inhabited houses has increased from 4,259,117 to 4,833,844, of uninhabited houses from 261,345, to 380,684, and of houses in course of erection from 37,803 to 46,759, will afford some indication of the large and increasing number of persons who are interested in the subject of building.

Mr. Emden divides his book into three parts which are respectively that of (1) The Law relating to contracts to build, Building Leases, &c.; (2) Precedents for Building Purposes; and (3) The Statute Law with respect to Building. The twenty-three chapters into which Part I. is sub-divided, contains a minute and exhaustive exposition of the branch of the Law with which it deals. The Precedents in Part II. appear to be apt and well chosen, while the collection of Statutes is elucidated by pertinent notes and references to the latest decided cases under the various sections. The "Glossary of Architectural and Building Terms," which is appended, contains much technical information which the lawyer and owner of property will find practically useful in their intercourse with the building fraternity.

Hints on Advocacy. By RICHARD HARRIS, of the Middle Temple and Midland Circuit, Barrister-at-Law. Sixth Edition, Revised and Enlarged. Stevens and Sons. 1882.

The fact that the work before us has reached its sixth edition is sufficient to prove the utility which it has been found to possess for the legal profession. Passages bearing upon

Advocacy may, no doubt, be found in memoirs of great lawyers, such as Lord Campbell, Lord Abinger, &c.* But of scientific treatises on this subject there is so absolute a dearth that Mr. Harris may be said to have broken a practically virgin soil. We have not space to go into details to show how well he has worked it. But we may say generally that he has produced a book at once entertaining and really instructive. The principal varieties of witnesses are classified under leading types, and the young aspirant to forensic honours is warned what *not* to do, as well as what to do, with each type. It is unnecessary to remark that many of the types of witnesses are amusing to read about, whether their special characteristic consists in being "nervous," "awkward," "truthful," or "positive." The humorous as well as the serious sides of the aspect of the police force, as witnesses and as prosecutors, are both set before us. We have lately been reminded by the leading journal of the stupendous humorousness of the Force as displayed in Ireland in the person of Inspector Smith, who seemed to consider himself possessed of a sort of treasure of superabundant merits, out of which he could evolve a general power of absolution for the constabulary under his command.

On the Grand Jury question, Mr. Harris appeared at first sight to take up a position antagonistic to that which has been advocated in this *Review* by Mr. Kinghorn. But, on consideration, we find the two writers in substantial agreement. An institution capable, *teste* Mr. Harris, of being worked as a "secret inquisition," must needs, as he urges, afford work for any Attorney-General of whatever politics, to "take away its power for mischief."

Mr. Harris always writes to the point. His book deserves to be carefully read by the young barrister, whose career is yet before him. He may not improbably owe some of his subsequent laurels to the study of *Hints on Advocacy*.

Transactions of the National Association for the Promotion of Social Science. Dublin Meeting, 1881. Longmans. 1882.

The interesting volume which has just issued from the press contains a full record of good work done under circumstances of no little difficulty. The Dublin Meeting of the Social Science Association, which might well have been thought a somewhat risky experiment, proved to be one of the most successful that has been held of

late years. Warmly taken up by the inhabitants of the Irish capital, the Congress was hospitably received, and its work kept up to a standard worthy of a city claiming to be the Second City of the United Kingdom. The subjects, as usual, cover a wide area, but the selected subjects, which are the principal test, give at least as large a place to practice as to theory, and show no disposition to evade difficult questions because of their difficulty. Mr. Joseph Brown, Q.C., in his paper on the Jury Laws, gave his hearers much food for reflection in the details which he was able to set before them of the working of a reduced Jury, with a majority verdict, in several of our Colonies. Why, he then asked, is a majority verdict good on one side of the Tweed, and not on the other: for Englishmen in Tasmania and Jamaica, but not in England or Ireland?

International Law was represented by a discussion on the Desirableness of Periodical Meetings of Representatives of various States, to which all disputed questions should be referred. Sir Sherston Baker, the learned editor of Halleck's *International Law*, and Mr. C. H. E. Carmichael, M.A., took up a generally negative attitude, while Don Arturo de Marcoartu demanded the constitution of an "International Parliament and Supreme Tribunal." This seems a sort of fusion of the scheme of an "International Government," sketched by Professor Lorimer in the *Revue de Droit International*, with the more generally advocated plan of an International Tribunal. The presence of Mr. Dudley Field, the well-known author of *Outlines of an International Code*, gave additional zest to the debate.

The address of the distinguished President of the Congress, Lord O'Hagan, and the several Presidents of Departments are well worth reading and studying. They embody, as the entire volume of *Transactions* embodies, many thoughts of many minds.

Essays in Jurisprudence and Ethics. By FREDERICK POLLOCK, M.A., LL.D., late Fellow of Trinity College, Cambridge. Macmillan and Co. 1882.

A volume of Essays on two such closely allied subjects as those which Mr. Pollock has here undertaken to discuss, cannot fail to be of value to the students of either science. When treated by Mr. Pollock, we know beforehand alike the care and the skill with which they will be treated.

The volume before us deals with not a few serious and important questions of the day, in a clear and forcible style, suited alike to the jurist and the general reader. We have here such varied topics as the Nature of Jurisprudence, the Theory of Prosecution, Mr. Spencer's Data of Ethics, the Oath of Allegiance, the Science of Case-Law, the History of English Law as a branch of Politics, and Marcus Aurelius and the Stoic Philosophy.

Of so diversified a collection, the result of several years of thought and writing, we cannot pretend to give more than the merest outline. Some of the Essays, dealing as they do with works and subjects which have been treated either in articles or reviews in our own pages, have for us a somewhat special attraction. It has been with no little added interest that we have followed Mr. Pollock through his able analysis of the recent works of Prof. Holland, Prof. Lorimer, and Mr. W. E. Hall. We are glad to note, and we are sure that Mr. Pollock himself will have noted the fact with equal pleasure, that the learned Professor of Public Law in the University of Edinburgh has received a fitting recognition of his high merit in the shape of the Doctorate of Laws of his own *Alma Mater*, which is also, *honoris causâ*, the *Alma Mater* of Mr. Pollock. Many readers will turn almost instinctively to the Essay on the "Oath of Allegiance," fraught as it is with a most direct bearing on a still abiding controversy. The "bare residue," retained in 1868, of the "elaborate fabric" of oaths designed by a long series of Statutes as a bulwark against the Pope and the Pretender, is indeed, as it would seem to a dispassionate judgment, very small. But it is large enough to afford a lever for a considerable agitation, in which, so strangely are the tables turned, the representative of the Pope in this realm sides with those who wish at all costs to bolster up what they believe to be their "common Christianity" by maintaining this highly valuable bulwark, price £500, and upwards. What would Marcus Aurelius have thought of such doings? Would they have answered his conception of "living according to Nature," or have fulfilled the stoic Vision of the World-State, that City whereof the several States are but streets, and whereof all men here below are citizens? Assuredly not. Our eyes, we must confess, are yet holden, and the walls of that fair City greet us not, save in the visions of the night. Pray we then,
Fiat Lux!

Lectures on Credit and Banking. Delivered at the request of the Council of the Institute of Bankers in Scotland. By HENRY DUNNING MACLEOD, M.A., of Trinity College, Cambridge, and the Inner Temple, Barrister-at Law. Longmans. 1882.

Mr. Macleod, with whose various works on the Science of Economics the readers of this *Review* are familiar, has here made a useful addition to that class of his writings by which he has sought to popularise the conception of Economics. Addressing himself in the present case to Scottish audiences, and to audiences of Scottish bankers, the learned lecturer has naturally emphasised the fact upon which he loves to dwell of the support given to his views by Roman Law, the basis, as he rightly reminded his hearers, of so much of Scottish as well as Continental Law. Once more Mr. Macleod here insists that the true Economic test of Value is not Labour but Exchangeability; or as the Roman Law puts it, "*Res tanti valet quanti vendi potest.*" Once more he sets forth that Property is in his view, as in Bacon's, a Right, not a Thing; the Totality of Rights which can be exercised over anything.

Mr. Macleod's language is always clear and forcible, and full of example and illustration. We cannot but hail in these lectures a good omen for the hope which he expresses that the Scottish bankers of the nineteenth century will imitate on Forth and Dee that union of commerce with learning which made the shores of Arno so brilliant in the days of the Medici.

A Concise Abridgement of the Law of Real Property. By J. A. SHEARWOOD, of Lincoln's Inn, Esq., Barrister-at-Law. Second Edition. Stevens and Sons, 1882.

We have here another of Mr. Shearwood's clear and useful manuals for the student. It seems to us to be excellently adapted to its purpose, and is in the present edition brought well down to date. The author is careful to support his statements throughout by references to well-known text books, ancient and modern, ranging from Glanvill to Dart's *Vendors and Purchasers*. References are also given to the necessary Case-law of the subjects, including some cases which have been very fully discussed in this *Review* as, e.g., *Angus v. Dalton*, in an article by W. Markby, D.C.L., the learned Reader in Indian Law in the University of Oxford, in No. CCXXXII. for May, 1879.

THE LAW MAGAZINE AND REVIEW.

No. CCXLV.—AUGUST, 1882.

I.—THE CHANNEL TUNNEL FROM THE POINT OF VIEW OF INTERNATIONAL LAW:

A SUGGESTION well calculated to startle the nerves of all timid and peace-loving people has been made in a recent number of the *Law Journal*.

“Those who oppose the execution of a Channel Tunnel on military grounds,” says the writer, “will do well to consider whether the opposition of this country is necessarily conclusive. Suppose the ‘Chemin de Fer Sous-Marin,’ aided it may be by British capital, were to take French leave, and set to work without asking the British Government or Parliament?” The writer then goes on to argue that as a late decision of the Courts of this country has established that the realm of England only extends seawards to the line of low water mark, and that as the jurisdiction since given to the English Courts by the Territorial Waters Act of 1878, only applies to ships on the sea, and not to land beneath the sea, there is nothing in International or Municipal Law to prevent a French Company, if so minded, from running a tunnel from the French coast, at any rate to the low water mark at Dover, even against the will of the British nation and Government; and that if, as is the case, we believe, at Dover, the foreshore were owned by a private individual, and not by the Crown, as is usually the case, the company might buy the foreshore

by private agreement with the owner, and complete their tunnel, approaches and all, in defiance of our national protest. "In fact," he continues, "from the point of view of International Law, it would be the last step only which would cost—namely, the rise to the surface of the tunnel under the foreshore and in British *terra firma*. If, however, the French company could buy their footing there is no reason why they should not hold it, as by the Naturalisation Act of 1870 the disability of aliens to hold land is abolished. No doubt an Act of Parliament might be passed annulling the purchase; but such a step is more possible than practicable. It thus seems that, if England does not meet France half-way, we may have France coming across to us under the sea, and actually touching British soil at Dover."

This alarming theory is dismissed in a few scornful words by the "Eminent Military Authority" who contributed an article on the question of the Tunnel to the *Nineteenth Century* for March:—

"To maintain the contrary," he says, "is to put forward a plea very much like that of the legal paper which the other day, by an ingenious calculation as to the number of miles from the shores to which our jurisdiction extended, and expressing a grave doubt whether we had any jurisdiction at all under the sea, proved that by International Law we were bound to permit our national destruction. To all which I would reply in the words of the greatest of our constitutional lawyers, who when speaking about our destruction of the Danish Fleet, said, 'It is in vain to refer to the Law of Nations for any authority on the subject in the unprecedented circumstances in which this country is placed. What usually passes by that name is merely a collection of the dicta of wise men who have devoted themselves to this subject in different ages, applied to the circumstances of the world at that period in which they

wrote, or circumstances nearly resembling them, but none having the least resemblance to circumstances in which this country is now placed.'"

Although, perhaps, the national danger from French enterprise thus threatened by our legal authority will be dismissed by most practical men as theoretical and, indeed, chimerical, it may be not uninteresting, in view especially of the claim recently set up by the English Tunnel Company to carry on their works below low water mark, without the sanction and against the wishes of the Board of Trade, if we consider briefly the important questions raised by the two contradictory authorities legal and military now before us.

On the one side it is said the Tunnel is being constructed under the bed of the English Channel which forms part of the high seas; the bed of the high seas is the property of no one nation, it is waste land which may be occupied by the first comer to the exclusion of all others, and occupancy by the subjects of a State draws with it State occupation and dominion. The realm of England extends no farther seawards than the low water mark except for purposes of criminal jurisdiction over foreign ships. There is nothing therefore to prevent a French company from constructing a tunnel from France to the limits of low water at Dover, where the foreshore belongs to private owners, and it would be a breach of International Law for the British Government in time of peace to prevent by force works out of the realm of England, however much those works might be in their opinion a standing menace to the country. To this reply is made that International Law consists of no inflexible rules, but is capable of being modified to meet the circumstances of every new case and every new danger, and that no nation should permit itself to be fettered by rules which might lead to its national destruction. Without wholly agreeing with the political opportunism of this definition of

the Law of Nations, or relying as a precedent upon such a very dubious piece of International Morality as the seizing of a neutral fleet to prevent the possibility of its becoming hostile at some future time, let us attempt to deduce from the recognised rules of International Jurisprudence some equitable and reasonable principle which may serve as a conclusive answer to an alarming proposition.

The questions involved in the discussion are three: 1st. What is the Law of Nations as to property in and possession of the bed of the sea? 2nd. What are the recognised limits seawards of the territory and jurisdiction of a State? 3rd. What means of protection and defence is a nation entitled to adopt for the purposes of self-preservation? The answers to these three questions which we will endeavour to give in order, must depend on that system of International Jurisprudence which, founded on justice, equity, and the reason of the thing, has received the assent of all civilised independent communities, either positively as by treaty or compact, or impliedly as by immemorial usage and acquiescence.

The question whether the open sea or any part of it is, or can be, the property of any one State to the exclusion of all others has given rise to many celebrated controversies in former days. Warlike nations which by their maritime superiority have from time to time enjoyed an undoubted practical supremacy over the high seas, have not been backward in asserting claims to actual dominion and possession—thus the Crowns of Spain and Portugal claimed the exclusive dominion both of the lands and seas of the New World, under the famous grant of Pope Alexander VI.—founded on the right of discovery and conquest. These arrogant pretensions were boldly combated by the Dutch as soon as they had shaken off the political yoke of Spain and the religious yoke of Rome, and their great statesman and jurist, Hugo Grotius, in his celebrated treatise, *Mare*

Liberum, published in 1609, took the lead in maintaining the common right of mankind by the Law of Nature to the free navigation, commerce, and fishery of the Atlantic and Pacific Oceans. More reasonable claims have been set up by various nations over what may be called the narrow seas washing their shores: thus Denmark used to claim by immemorial usage the sole dominion of the Sound and two Belts, and indeed at one time extended her pretensions to the sole right of fishery in the North Sea, a claim haughtily rejected by Queen Elizabeth in 1602. So the Venetians claimed the sole dominion of the Adriatic adjacent to their territories.

But the greatest aggressor in this respect has been the Crown of England. Apart from the proud claim to be saluted first, all the world over, as sovereign of the seas, which at the zenith of her maritime ascendancy she rigorously exacted, she has from the time of Alfred claimed and generally successfully maintained a sovereignty over the four seas which wash her shores. The rights she asserted over these seas, though mainly those of exclusive fishery, and of homage to her flag on ships of war to be paid by all foreign ships, public and private, striking their flags on meeting a king's ship within the limits of her dominion, seem to have been claimed as due to the English Crown as a recognition of her Empire over these seas, and her right to exclude therefrom the vessels of other nations even in times of peace. Thus we find in the reign of Edward I. that the French king, and the greatest part of the maritime nations of Europe, solemnly acknowledged the "Sovraintie and Dominion" of the English king over "the English sea either upon the coasts of England or on any neighbouring coasts of the sea either towards Normandie or others more remote." So we find Lord Coke laying down as law that "If a man be upon the sea of England he is within the kingdom or realm of

England, and within the ligeance of the King of England as of his Crown of England."

In 1613, Albericus Gentilis, Professor of Civil Law in the University of Oxford, wrote a treatise in support of the claims of the Kings of England over the seas washing the British shores. In 1635, Selden, under the patronage of Charles I. and Archbishop Laud, wrote his celebrated treatise *Mare Clausum*, in which he called in question the principles of Grotius, and attempted to show by usage and treaty that the Sovereign of Great Britain was absolutely entitled to the dominion and property of the narrow seas which wash the shores of Great Britain and Ireland. Charles I. was so fully imbued with the principles enunciated by Selden that he demanded from the Dutch Government the punishment of Grotius for his audacity in publishing *the Mare Liberum*; and Cromwell and his Republican Parliament made war on the Dutch to compel them to acknowledge the British empire over these seas. The Dutch appear at various times to have conceded the exclusive rights of fishery to English subjects, and by the Treaty of Westminster in 1674 they conceded the homage of the flag in the completest manner. "It was carried," says Sir William Temple, "to all the height his Majesty could wish; and thereby a claim of the Crown, the acknowledgment of its dominion in the narrow seas, allowed by treaty from the most powerful of our neighbours at sea, which had never yet been yielded to by the weakest of them that I remember in the whole course of our pretence; and had served hitherto but for an occasion of quarrel, whenever we or they had a mind to it, upon either reasons or conjectures."

Sir Leoline Jenkins, Judge of the Admiralty Court in the reign of Charles II., gives us some remarkable examples of the length to which this right of the flag was carried in his time. An English yacht, on board of which he himself

was, being at anchor near the town of Brill, in Holland, a Dutch man-of-war having on board Ambassadors from the States to England, passed without striking her colours. The captain of the yacht asked Sir Leoline what he should do; and on his replying that even old Van Tromp had struck to Lord Arundel in Goree Roads, he fired three shots at the Dutchman, and although the Ambassadors remonstrated that they were not bound to strike their flag in their own port, the man-of-war was in the end compelled to give the salute. On another occasion the captain of an English yacht received orders from the Admiralty to seek out the Dutch fleet and to fire upon it if it did not strike its colours to him, and to go on firing until it either did so or returned fire. The Dutch admiral having contemptuously refrained from returning the fire, the English captain desisted, and on his return to the Thames was sent to the Tower for having neglected to carry out his orders.

The French, however, when strong enough, seem to have generally refused to acknowledge the British pretensions, and Louis XIV. actually claimed the salute from foreign vessels in a like case, and in 1689, William III. alleged as one of his motives for declaring war against France, "*Que le droit de pavillon qui appartenait à la couronne d'Angleterre a été disputé par son ordre; ce qui tend à la violation de notre souveraineté sur la mer, laquelle a été maintenue de tout temps par nos prédécesseurs et que nous sommes aussi résolus de maintenir pour l'honneur de notre couronne et de la nation Anglaise.*" All these vain and extravagant pretensions, to use the words of Sir Alexander Cockburn, have long since given way to the influence of reason and common sense. The high seas, that is to say "all the whole seas of the world below low water mark," are open to the whole world, and the ships of every nation are free to navigate them, and while so navigating are subject

only to the law of the State to which they belong. The question of salutes has been settled by international agreement on the principle of perfect equality among all sovereign States.

The reason of the thing, the preponderance of authority and the practice of nations have now finally established that the high seas, inasmuch as they are the necessary highway of all nations, cannot be the property of any one State, so as to give that State any right to interfere with or exclude from peaceful navigation the ships of any other State. Where, then, the sea or the bed on which it rests can, consistently with this universal right of navigation, be permanently and beneficially occupied, there seems to be no reason why it should not be occupied like any waste or unappropriated land, and become the property of the first occupier. There appears, therefore, to be nothing, so far, in the rules of International Law to prevent a French company from excavating their tunnel through the at present unoccupied bed of the Channel as far as the limits of the English dominion, provided that they in no way interfere with navigation rights, or to prevent them from becoming by their occupation and industry absolute owners of the land occupied against the whole world, subject to the laws of France alone. Moreover, should the French Government think fit to adopt this extension of its natural boundaries, there seems to be nothing to prevent the Tunnel from becoming national territory of France, unless it should be declared neutral by international agreement or treaty.

This, then, brings us to the second head of our discussion:—What are the territorial limits of the realm of England? Had this question arisen ten years ago there is very little doubt that it would have been answered by the majority of persons acquainted with the subject, that the realm of England consists of the land and water in the actual possession of the nation, including the ports and

harbours, gulfs and bays, straits and inland waters, and that portion of the sea which washes its shores to the distance of three nautical miles from low water mark. Such has generally been the limit assigned by writers on International Law to the dominion of a State: all agree that a certain limit seawards from the shore belongs of necessity to each State for its protection in times of war, and for its effectual control of police and revenue matters; the only difference being as to the extent of this dominion, some writers asserting that it extends for 100 miles, others for three marine leagues, and none for less than three miles. The limit which has usually been fixed at three miles was named by early writers as the distance of a cannon shot. "*Terræ dominium finitur ubi finitur armorum vis*," and it has often been questioned whether this limit, which was fixed as the limit from which a country could be assailed in war, or endangered when neutral, ought not to be extended in proportion to the increased power of projectiles. However this may be, in the year 1876 was decided the celebrated *Franconia* case, in which the majority of the judges, eight against six, decided that the realm of England only extends to low water mark, and that although the common consent of nations has appropriated the sea within three miles of the shore to the State, for the State to deal with as it may think fit and expedient for its own interests, yet that such concurrent assent that a portion of what was before treated as the high seas and as such common to all the world, should be treated as British territory, could not of itself, without the authority of Parliament, convert that which before was in the eye of the law high sea into British territory and so change the law, or give to the Courts of this country a jurisdiction over the foreigner where they had it not before. The practical effect of this decision, by which the captain of the German ship *Franconia*, which had run down while on a foreign

voyage an English vessel within three miles of the English coast and caused the death of a passenger under circumstances which amounted to manslaughter by the English law, was discharged, after having been convicted at the Central Criminal Court, is that the absolute dominion and property of the realm of England ceases at low water mark, except in cases where portions of the soil of the sea have been physically and permanently occupied, as by forts, breakwaters, and the like. Immediately after this decision, Parliament passed the Territorial Waters Act, 41 and 42 Vict., c. 73, by which, without in any way affecting the rights as to the ownership of the soil of the shore below low water, it was enacted that every offence committed within three miles of the coast by any person, whether a subject or a foreigner, should be within the jurisdiction of the English Courts. The decision in the *Franconia* case, which appears to negative the general maxim of International Law, that a nation is presumed to occupy all territory within the limits over which it can maintain an effective control, must, however unsatisfactory to national pride, be now accepted as the law of the land, unless Parliament (whose powers, by the way, to legislate in the matter without the consent of other nations interested, are questioned by some of our most learned lawyers) should see fit to alter or declare the law as to the limits of the national domain.

We are, therefore, thrown back upon our third head of discussion: What powers has a nation for the purposes of self-defence and protection, over and beyond what the simple rights of property give it? It cannot be questioned that the Crown by its prerogative, supplemented by the provisions of the various Defence Acts, has complete authority over subjects and foreigners alike within the realm as strictly defined, with regard to the national defence. Even in times of peace, lands may be taken, buildings

demolished, and erections prohibited, wherever necessity or expediency dictate such proceedings for the protection of the kingdom, after due notice and payment of compensation to the owners; whereas, "in times of war," to quote from the celebrated Ship Money case, "Not only His Majesty but likewise every man that hath power in his hands may take the goods of any within the realm, pull down their houses, or burn their corn to cut off victuals from the enemy, and do all other things that conduce to the safety of the kingdom, without respect had to any man's property."

It only remains for us therefore to consider how far these salutary principles can be applied to the prevention or demolition of works technically speaking outside the territory of the realm, but from their position a possible source of danger in the event of war.

This question has been fully treated of by several eminent jurists. Vattel, in his "Law of Nations," says that a nation or State has a right to everything that can help to ward off imminent danger, and keep at a distance whatever is capable of causing its ruin, and may for this purpose extend its dominion over the neighbouring seas as far as its safety renders it necessary and its power is able to assert it.

The whole subject as to the protection and defence of the maritime frontiers of a State is so fully and clearly stated by M. Ortolan in his "*Diplomatie de la Mer*" that we cannot do better than give an exact translation of his words (Ed. 1864, I., p. 152, *seq.*):—"The security of a State, its duty to protect itself, create for it the necessity of watching particularly over its frontiers. In virtue of its right of absolute independence it has the right to regulate at its pleasure, with regard to foreigners, the approaches to its territory. The maritime frontiers of a State are by their nature exposed to

unexpected attacks, to sudden invasions ; contraband trade and illicit commerce can be organised there on a large scale—a nation ought then to exercise a most vigilant supervision over the vessels of all kinds which may attempt to effect a landing on its shores in a clandestine manner, and even over those which approach too near. The shores and banks of the sea which washes the coasts of a State are the *natural* maritime boundaries of that State. But for the protection, for the more effectual defence of these natural boundaries, the general custom of nations in accordance with numerous public treaties permits an imaginary line to be traced on the sea at a suitable distance from the coasts, and following their contours, which is to be considered as an *artificial* maritime frontier. Every vessel which comes within this line limiting the rights of sovereignty and jurisdiction of the State is said to be within the waters of the State. It is this imaginary line which Pinheiro-Ferreira calls 'ligne de respect,' and within which he justly remarks that 'the foreigner, even in the absence of all force, ought to conduct himself as if he were upon the territory of the State, and to undertake nothing which the Government of the State would have a right to prevent as threatening the property or safety of the nation.' Charged with this particular duty of public defence over the whole of this space, the State has the right to make the regulations and laws necessary for this end, and to employ the public force to ensure their execution there. In a word, the State has over this space not the right of property, but the right of empire ; a power of legislation, of supervision, and of jurisdiction in conformity with the rules of International Jurisdiction."

This statement of the law by an eminent authority appears to afford a complete and satisfactory answer to the fears expressed by the *Law Journal*. The State would appear to have an absolute right to protect its frontiers in

any way it thinks fit or necessary for its safety, to prevent the construction of any works menacing its security, and moreover to have the same jurisdiction for such purposes over foreigners, at least within the limits of its territorial waters, as it would have over foreigners or subjects within the legal boundaries of the realm. But as writers on International Law, "however valuable their labours may be in elucidating and ascertaining the principles and rules of law, cannot make the law," we must enquire shortly how far the above stated principles have been assented to and adopted by the nations by treaty or usage, and whether they are in any way negatived by the decision of the judges in the *Franconia* case.

The whole body of the judges in that case agreed that though the national dominion and property stopped at low water mark, the jurisdiction of the British Crown extended further for certain purposes. Thus, by treaty with France, the sole right of fishing in the sea within three miles of the coast belongs as between those two nations to British fishermen exclusively; again, by the Revenue and Customs laws, the British Government is entitled to enforce the necessary measures for the prevention of smuggling, at least within those limits, over ships of all nationalities. Moreover, for the security of nations when neutral, it has been declared by numerous international agreements to be a breach of neutrality, an invasion of the territory of a State, and a hostile act, to pursue or seize a vessel within the range of the cannon, of that neutral State. "The consensus of civilised independent States," says Sir Robert Phillimore, "has recognised a maritime extension of frontier to the distance of three miles from low water mark, because such a frontier or belt of water is necessary for the defence and security of the adjacent State." "They are for the purposes of defence," says Sir Alexander Cockburn, referring to the erection of forts below low water mark,

"and come within the principle that a nation may do what is necessary for the protection of its own territory."

It would appear, therefore, to be clear law, founded as before postulated, on "justice, equity, and the reason of the thing" no less than on necessity, that the British Government, without requiring the sanction of Parliament, solely by the inherent prerogative of the Crown for the defence of the kingdom, may, if it think fit, prohibit absolutely the construction of any works either above or below ground, at least within the limit of three miles of the coast, without incurring any charge of violating the Law of Nature or of Nations. Such an exercise of the prerogative of the Crown might no doubt be thought a hardship by shareholders and others who had risked large sums in the construction of what they probably deemed a harmless undertaking, but "*salus populi suprema est lex*" is a maxim which has at all times and in all countries been held to justify the necessary destruction of private property for the public safety. And in the opinion of the present writer there is little doubt that a vast majority of Her Majesty's subjects would at the present time recognise the wisdom and justice of its application for the preservation, if not from actual danger, at least from constant menace, of the "fair, free homes of England," and of that throne which for so many centuries has stood secure—

"Broad based upon the people's will
And compassed by the inviolate sea."

H. J. W. COULSON.

II.—THE CRIMINAL LIABILITY OF THE HUNDRED.

THE practice of making a district answerable for crimes committed by its inhabitants, or of making a group of men answerable for crimes committed by a member of the group was at one time thought to be of vast antiquity. The institution which the Norman lawyers called frank-pledge, and which has lately, perhaps for the last time, found mention in our statute book, was regarded as much older than the Norman Conquest, and indeed as one of these institutions which might safely be ascribed to King Alfred or to primitive man according to the taste of the ascriber. Recent investigations however have thrown doubt, or more than doubt, on its claims to so long a pedigree. Professor Stubbs speaks of it thus* :—

“ This institution, of which there is no definite trace before the Norman Conquest, is based on a principle akin to that of the law which directs every landless man to have a lord who shall answer for his appearance in the courts of law. That measure, which was enacted by Athelstan,† was enlarged by a law of Edgar,‡ who required that every man should have a surety who should be bound to produce him in case of litigation, and answer for him if he were not forthcoming. A law of Canute§ re-enacts this direction, in close juxta-position with another police order; namely, that every man shall be in a hundred and in a tithing; where the reference is probably to the obligation of the hundred and the tithing to pursue and do justice on the thief. The laws of Edward the Confessor, a compilation of supposed Anglo-Saxon customs issued in

* Const. Hist., § 41.

† Athelstan, II. 2.

‡ Edgar, III. 6; IV. 3.

§ Canute, II. 20.

"the twelfth century, contain a clause on which the later practice of frank-pledge is founded, but which seems to originate in the confusion of these two clauses of the law of Canute."

Having given the substance of this well-known clause, well-known because it is the foundation of all that was written touching frank-pledge from Bracton's day onwards, Professor Stubbs thus sums up the evidence:—"There is no trace of any similar institution on the Continent, or even in England, earlier than the middle of the twelfth century, although, as has been said, it would not be strange to the legislation of the Conqueror." Not strange to the legislation of the Conqueror because not unlike the law ascribed to him fining the hundred in which a Frenchman was found murdered.

It would be rash to dispute, nor have I any intention of disputing the sentence thus pronounced, a sentence which bears the authority not only of the great historian from whose book it has been cited, but the authority of almost all those who in these days have been at pains to search out the origin of the curious institution in question. But there is evidence, and that of a very remarkable kind, in favour of the supposition that even before the Conquest the practice of fining a district for the offences of its inhabitants obtained at least in one part of England, and so far as I am aware that evidence has never yet received the notice that it deserves. It does not explain the frank-pledge in its later shape, the shape which it bears in Bracton's treatise, but, unless it be the outcome of some mistake, it does show that the common responsibility of a group of men for the crimes committed by one of their number was an idea familiar in England before William of Normandy landed upon our shore.

In the first place we must refer to Domesday Book. As is well known there are scattered about in this great rent

roll some brief notices of English criminal law. We are told what are the *forisfactura* which the king enjoys in this and that county, in other words, what according to local custom are the pleas of the crown, criminal justice being from the royal point of view a source of income. We know from Canute's code* that the number of these pleas which were considered as inalienable rights of the crown was very limited ; but still there were certain crimes, which (save where some more than ordinary franchise had been granted) brought profit to the king himself. Among these was breach of the king's special peace or protection (*grith* or *mund*), not a mere breach of the general peace (*frith*) which existed at all times and in all places, but a breach of the peculiar peace which surrounded the king's person and dwelling, or had been granted by his letters of safe-conduct, or in some other manner specially proclaimed. Now the brief notices in Domesday of these *placita coronæ* are for the more part so thoroughly in harmony with all that we know of the native English law, that they seem trustworthy evidence of that law even, when other authority fails us. But concerning breach of the king's special peace they tell us what is very remarkable, and it may be well to repeat their substance at some length.

Berkshire.†—If any one kills a man who has the king's peace, he forfeits to the king his body and all his substance.

Oxfordshire.‡—If any one breaks the peace given by the king's hand or seal, by slaying the man to whom the peace is given, his life and members are at the king's mercy.

Worcestershire.§—In this county if any one knowingly breaks the peace which the king gives with his hand, he is

* Canute II., 12-15.

† I., 56 b. It is much to be regretted that concerning a large and important part of England (Sussex, Surrey, Hants, etc.), no information is given us.

‡ I., 154 b.

§ I., 172.

deemed outlaw; but the peace of the king when given by the sheriff, if any one breaks this, he pays 100 shillings.

Hereford.^{*}—The king has in his demesne three forfeitures, breach of the peace, hamsoen (house-breaking), and forsteal (ambush); whoever commits one of these crimes pays 100 shillings to the king, whosoever man he may be.

Chester.[†]—Peace given by the king's hand or writ, or by his deputy (legatum), if this be broken, the king has 100 shillings, but if the king's peace be at his command given by the earl, out of the 100 shillings the earl has the third penny. If the same peace be given by the king's reeve or the bailiff of the earl, breach thereof is paid for with 40 shillings. . . . If a free man in breach of the king's peace kills another within a house, his lands and goods go to the king, and he is outlaw.

These customs have been cited in order that the reader may contrast them with what he will meet when he quits Mercia and enters the Daneslaw. There seems at first sight some variance of local practice as to whether or not a breach of the king's peace given by his hand is or is not a crime for which a money composition is accepted. Possibly the passages may be reconciled by supposing that the 100 shillings fine is payable only when the breach of the peace is not aggravated by homicide, but this is not to our point, which is that nothing whatever is said about any fine imposed on any save the criminal. But let us enter the Daneslaw.

Nottinghamshire and Derbyshire.[‡]—Peace given by the king's hand or seal, if this be broken, it is paid for by (per) 18 hundreds. Each hundred £8. Of this the king has two parts, the earl the third, i.e., 12 hundreds pay to the king, and 6 to the earl.

^{*} I., 179.

[†] I. 262 b. See also Shropshire, I. 252.

[‡] I. 280 b.

*Yorkshire.**—Peace given by the king's hand or seal, if this be broken, it is paid for to the king only by (per) 12 hundreds. Each hundred £8. Peace given by the earl, if this be broken, it is paid for to the earl himself by (per) 5 hundreds, each £8.

Lincolnshire.†—Peace given by the king's hand or seal, if this be broken it is paid for by 18 hundreds. Each hundred pays £8; 12 hundreds pay to the king, and 6 to the earl.

Can there be any doubt about the meaning of these passages? "Unumquodque hundredum solvit viii. libras." The writer must have meant that a fine was laid upon certain districts, called hundreds, that each hundred paid £8, that thus the heavy fine of £144 or £96 was collected,—a very different matter from the fine of 100 shillings which elsewhere paid for a breach of the king's hand-given peace. Was all this a blunder of Norman scribes? If so it was a wild, stupendous, blunder.

But this is by no means all the evidence concerning these large fines, levied in the Daneslaw and only in the Daneslaw. Among the various sets of laws bearing the names of the Confessor and the Conqueror there is a brief code of which we have both a French and a Latin version.‡ The origin of both versions is very obscure, and the French version in its completeness is known to us only in the work of the forger who called himself Ingulf. Consequently it is a document under suspicion. It seems to be a work of private enterprise patched together from the laws of Canute and perhaps from some old English documents which have not come down to us. That the Latin version is a translation made from the French, seems to me, after a minute examination of the two texts, indubitable, while I believe it to be the opinion of philologists that the French version, though undoubtedly it has suffered at the hands of

* I. 298 b.

† I. 336 b.

‡ Will. Conq. I.

copyists, can in substance hardly be of later date than the twelfth century.* Be that as it may, we are theret told that if in the Mercian law any one breaks the king's peace, the fine is 100 shillings, but in the Daneslaw the fine is £144. We are not told who pays this fine, we are only told its amount. That amount is simply enormous if the fine be set on the individual peace breaker, and wholly out of proportion to the general criminal tariff set forth in this very document. It would be easy to change pounds into shillings, but how can we do this with Doomsday before our eyes? The agreement with the great survey is exact, for £144 is just what will be paid if 18 hundreds pay £8 apiece.

Turn we next to the code bearing the Confessor's name, which professedly states the report of those jurors from whom William demanded a summary of the English laws.† This is the work which Professor Stubbs in the passage above cited describes as "a compilation of supposed Anglo-Saxon customs issued in the twelfth century," and the issue of which there is some reason for attributing to Glanvill. It is, at least in its present form, a queer untrustworthy patchwork, but good evidence of what the twelfth century thought about the eleventh. Now this contains much to our purpose. In the first place the writer enumerates the various solemn peaces.§ The peace of the king is manifold. There is the peace given by his hand, the peace of his coronation days, the peace of the great church feasts, the peace of the king's highways. Then as to the punishment of him who breaks the king's peace.

* Littré, in his Dictionary, on many occasions adduces it as eleventh century work. As to the originality of the French version, c. 45 seems to me conclusive, when it is compared with the code of Canute from which it is taken—Canute II., 24. The Latin writer thinks that *voest* comes from *voir* (*videre*) and makes nonsense of the passage. It really means *vouch* and has more to do with *vocare* than *videre*. See too the absurd Latin rendering of c. 31.

† C. 12.

‡ Leges Edwardi Confessoris.

§ C. 12.

"Qui scienter fregerit eam, x. et viii. hundreda in Danelaga, "et corpus suum in misericordia regis." This enigmatical sentence would not of itself give us much information. But the writer after an interval returns to this matter,* again enumerates the great peaces and says that they all have one and the same sanction. "Verbi gratia, in Danelaga "per xviii. hundreda, qui numerus complet septies xx. libras "et iiii.; forisfacturam enim hundredi Dani et Norwicensis " (al. Norguenses)† vocabant viii. libras." His meaning is becoming clear. In the Daneslaw the fine of a hundred is £8, and this multiplied by 18, since in some way 18 hundreds are involved, gives £144. He then explains how out of each £8 the king has £5, the earl of the county £2 10s., the tithing-man (decanus) the remainder.

The mention of the tithing-man (decanus), who in one version is raised to a deanery,‡ sets the writer off on the subject of frank-pledge. But again he returns to his hundreds.§ Yorkshire,|| Lincolnshire, Nottinghamshire, Leicestershire, Northamptonshire and to the Watling Street, and eight miles beyond the Watling Street, are, he says, "sub lege Anglorum," but doubtless he means "sub lege Danorum," and what others call a hundred these counties call a wapentake.¶ Then follows an etymological excursus,

* C. 27 (25).

† Stubbs, Preface to Hoveden's Chronicle (Rolls Series), Vol. II., p. xlvii. The writer, who has theories of nationality, means men of Norway, not men of Norwich.

‡ *Decanus episcopi*: the whole document seems full of the interpolations of would-be expositors.

§ C. 30 (27).

|| A better reading than Warwickshire.

¶ I think that every one who has said anything of this passage has pointed out that "Anglorum" should be "Danorum," and this is made still plainer by the MS. spoken of by Stubbs, Preface to Hoveden (*loc. cit.*), where the following clause runs "and what the English (*Angli* for *alii*) call a hundred, these "counties call a wapentake." In the *Law Magazine and Review* (No. CCXLI., p. 348), I have suggested that the eight miles beyond Watling Street was meant to include the hundred "Dacorum" in Hertfordshire.

and then* "Erat eciam lex Danorum, Northfolc, Suthfolc, Cantebrugescire, que habebat in emendationem forisfacturæ ubi supradicti comitatus habebant xviii. hundreda, isti x. et dimidium. Et hoc affinitate Saxonum, quia tunc temporis major emendacio forisfacturæ Saxonum erat quater xx. lib. et iiii." This seems to mean that while in York, Lincoln, etc., 18 hundreds at £8 make up. £144, in Norfolk, Suffolk, and Cambridge, 10½ hundreds make up £84. This difference between the two parts of the Daneslaw is in some way due to the neighbourhood of the three last named counties to the "Saxones" among whom the greater *forisfactura* is £84.

Before going further it will be well to notice that the *Leges Henrici Primi*, another twelfth century compilation, though they over and over again make mention of breach of the king's special peace and its punishment, have nothing whatever to say about those enormously heavy fines. The crime is either one for which no pecuniary composition will be accepted, or is paid for by a fine of 100 shillings. This, taken along with our other evidence, may dispose us to believe that the practice of fining the district did not obtain throughout England, and in this context it is worthy of remark that the writer of the treatise which has gotten the name *Leges Henrici* ascribed some kind of super-eminence to the laws of Wessex.† It will have been observed that all our evidence concerning these large fines comes only from the Danized part of England. The exception to this, if exception it be, is the vague and obscure reference in the *Leges Edwardi* to the "Saxones" who lived near Norfolk and Suffolk.

Now from what has been already said we seem entitled to draw this inference, namely, that the makers of the

* C. 33 (30).

† He more than once says that Wessex is "caput regni et legum" (70, § 1; 87, § 5), a phrase which is applied to London in one version of the Confessor's Laws.

Doomsday survey believed that it then was, and that the lawyers of the next century believed that it then was, or at least had been, the law of some part of England, that when the king's hand-given peace was broken, a fine should be imposed upon a large district, consisting of 18, 12, or perhaps 10½ hundreds, each hundred paying £8. What was the origin of this law? That it was enacted by the Conqueror at some time between the conquest and the survey seems incredible. That surely was not the time when a difference between Mercia and the Daneslaw arose, when the custom of Cambridge became other than the custom of Nottingham. Two suppositions are open to us, either that these rules were older than the Conquest, or that they never existed save in the minds of Norman lawyers who mistook a payment of hundreds of coins for a payment by territorial districts called hundreds.

There is, so far as I know, but one passage in any of the old English laws directly bearing on the subject. It is necessary therefore to consider "the laws which King "Ethelred and his Witan have decreed at Wantage, as "frith-bot."* It has generally been considered that despite the fact that the ordinance in question was seemingly made at Wantage in Berkshire, it was nevertheless intended in some special manner for the Danized part of England. In favour of this conclusion are the mention of "the five "burghs " (which can hardly be other than the five Danish towns, Derby, Nottingham, Leicester, Stamford, and Lincoln), and the computation of all sums of money Danish fashion in half-marks and ores, instead of English fashion in shillings. Now taking Thorpe's translation, what we are told is this:—The king's grith (his special peace) is to stand as it formerly stood. The grith which he gives with his own hand is to be *bot-less*, that is to say, a breach thereof is a crime not to be atoned for by any money payment.

For the grith which the ealdorman and the king's reeve give in the assembly of the five burghs, *bot* may be made *with twelve hundred* (bete man thæt. mid xii. hund.). For the grith which is given in a burgh assembly, *bot* may be made *with six hundred*. For that which is given in a wapentake, *bot* may be made *with a hundred*. For that which is given in an alehouse, *bot* may be made, for a dead man with 6 half-marks, for a live man with 12 ores.

Now doubtless the natural interpretation, and as I suppose the only interpretation that the Anglo-Saxon text will bear, is that the twelve hundred, six hundred, and hundred here spoken of are coins. It is a little strange that the quality of these coins should not be mentioned, for such an omission is, to say the least, very rare in the Anglo-Saxon laws, but in this very document there is a passage* in which a person is directed to deposit "a hundred," the kind of the coins not being stated, and I believe that reckoning by hundreds without naming coins was a common Scandinavian, though not an English practice. Still no one can consider this Wantage ordinance side by side with the customs reported in Domesday and the *Leges Edwardi* without believing that there is some connection between them. They are almost exactly *in pari materia*.† It is true that according to Ethelred's law there seems to be no fine when the peace broken is that given by the king's own hand, while it is just in this case that according to the later authorities the 18 hundreds are fined. On the other hand, it is far from impossible that between the date of the Wantage assembly and the Norman Conquest the severity of the law had been mitigated, and this bot-less crime had become one for which in some cases a composition might be taken.† Besides, if we are right in our construction

* C. 7.

† Under Ethelred and Canute a reaction seems to have set in against the severe penal laws of their predecessors: Ethelred V., 3.; VI., 10; Canute II., 2.

of the customs in Domesday Book and in the 12th century compilations, the heavy fines there spoken of have nothing to do with the fate of the criminal. They are not paid by him but by his neighbours. It may be, therefore, that under Ethelred's law (which expressly declares itself to be merely declaratory), as there was a hundred fine, a six hundred fine, a twelve hundred fine, so also there was an eighteen hundred fine.

While therefore admitting that the hundreds mentioned in the Wantage ordinance are hundreds of coins, one is still tempted to believe that more is implied in the law than is expressed. The fine for breaking the peace given in a wapentake is a hundred, and what is the wapentake but a hundred or the assembly of a hundred? May it not be that in naming the amount of the fine, we also name the district upon which it is imposed? This ordinance relates, apparently, to the king's own peace proclaimed in and comprising a local assembly. When the ealdorman and king's reeve have proclaimed the king's peace in the assembly of the five burghs, an assembly representing a large district, if that peace be broken the whole district is fined. So with the wapentake, the assembly of a single hundred, if the king's peace proclaimed therein be broken, the whole hundred is fined; so even with the alehouse, probably the meeting places of township or tithing, for which in later days the vestry was substituted. It may, indeed, be difficult to imagine on what occasions the king's peace would be proclaimed in so humble an assembly, still there may have been occasions when the king's reeve had to transact business with the township.

Some such explanation as this is made the more probable when we attempt to determine what were the coins of which the "hundred" or several "hundreds" consisted. A breach of the peace proclaimed in the alehouse, or assembly of the tithing, is paid for by 12 ores. If, however, a man has been

slain, the fine is doubled, and becomes 6 half-marks. Now if the fine for a wapentake's peace be a hundred ores this will fall in with the theory that the wapentake consists of ten tithings, for it is by no means improbable that the hundred here mentioned is the so-called "long hundred" of 120*. At any rate, there is no other coin so probable as the ore. The wapentake's peace is thus reckoned at "one hundred" ores, the peace of a burgh assembly at "six hundred" ores, the peace of the assembly of the five burghs at "twelve hundred" ores. For peace given by the king's own hand no composition is provided; but, as already said, the supposition that for the breach of this also a fine is required from the district is not excluded by the declaration that the crime is (for the criminal) *bot-less*. Might we suppose that this fine was 18 "hundreds," that is 18×120 ores, we should neatly arrive at our sum of £144, for though the better opinion seems to be that the Danish ore was usually deemed equal to but fifteen pence, yet there is direct authority in Ethelred's laws for reckoning it at sixteen pence.† This result is arrived at by a perilous series of suppositions, nor is any stress laid upon the exact correspondence of figures. It is, however, necessary to notice that the largest fine mentioned in the Wantage ordinance is, if the hundreds be hundreds of ores (and that they must be so seems clear from the relation of the fine in the case of the wapentake to the fine in the case of the alehouse), a fine not merely great but enormous. At the very least twelve hundred ores are £75 and they may be £96. I believe that no other law contained in the Anglo-Saxon collection, or in the Norman compilations exacts a fine to the king amounting to one-tenth part of this sum. The heaviest of

* "If, as is generally believed, the Anglo-Saxon hundred was the long one of six-score, the tithing ought to have contained twelve, and Fleta speaks of the frank-pledges as *doseins*."—(Stubbs, *Const. Hist.*, sec. 41, note, p. 86.)

† Schmid, *Gesetze, Glossar, v. Geld-Rechnung*.

such fines or mulcts is I believe £5, and the difference between £5 and £75 is (the word must be repeated) enormous. What has just been said should be qualified by the statement that the murder fine was 46 marks, but the murder fine was a fine laid on a district not on an individual, and even this did not amount to one-half of £75. Now considering the comparatively small fines which were exacted even in the very worst cases, the conclusion seems inevitable that if the twelve hundred of Ethelred's law mean twelve hundred ores, the fine is imposed not on the criminal but on the district, and that district a large one. If they be not ores what are they? Twelve ores (sometimes 24) are demanded when the peace given in an alehouse is broken, and from this we clearly have an ascending scale, one hundred, six hundred, twelve hundred.

Probably therefore the Domesday surveyors were not in the wrong when they said that in the Danized counties a breach of the king's peace was paid for by a number of hundreds, each paying £8. Mistakes about numbers they may have made, but there was some substantial truth at the bottom of their statements. It may seem very strange to us that so large a territory as 12 or 18 hundreds should be fined for a crime, but the *Leges Henrici* speak of the impleading of a whole county, or of several hundreds.* There is, too, a series of entries in the Pipe Roll of the 31st of Henry I.† which seems to tell of a very large fine "pro pace fracta" imposed on a part of Cambridgeshire. The fine is paid in part by the great landowners, in part by the sheriff on behalf of the men of this; that, and the other township, and though we cannot say with certainty that all these entries were occasioned by one and the same crime, still they follow each other in immediate succession.

The importance of the evidence to which attention has

* Leg. Hen. Prim. 48, § 2. "Si totus comitatus, vel vii. hundreta super aliquibus implacitentur."

† P. 45.

been asked is not small, and I hope that it may come into the hands of explorers more competent than myself. Its importance is not small, because even if this fine for breach of the king's peace stood quite by itself it would 'be a very noticeable fact in the history of our criminal law. But it does not stand by itself, for if once established, it might be brought into connection with those two most remarkable institutions, the frank-pledge and the murder fine. As regards the former, it certainly throws no light on the much debated relation of the territorial tithing to the personal frank-pledge, or group of ten or a dozen sureties, but it may suggest that the tithing which was fined if the peace proclaimed in its alehouse was broken, may have been a responsible unit in the police system for other purposes also. As to the murder fine it may suggest that neither of the two rival stories about its origin contains the whole truth, neither the story now generally accepted that William introduced it as a protection for his French followers, nor the story which Blackstone took from Bracton and Bracton from the *Leges Edwardi* that the English Witan introduced it at Canute's request as a protection for his Danes. If in the Daneslaw it was the practice to fine a hundred or several hundreds for breach of the king's peace, it may also have been the practice to fine the hundred within whose bounds was found the body of a murdered foreigner, a foreigner to whom the king was "a protector and a kinsman."* Lastly, it may suggest that the twelfth century writers who spoke of England as divided between three laws, Danish, Mercian, West-Saxon, had more reason for insisting on this theory than they get credit for with most of their readers, and that there really were very great and very important diversities of local custom of which they tell us nothing expressly.

F. W. MAITLAND.

* Ethelred, VIII., 33; Canute II., 40; Leg. Hen. Prim. 75, § 6., 7.

III.—THE UNITED STATES SUPREME COURT ON BILLS OF LADING.

AT the forthcoming Tenth Conference of the Association for the Reform and Codification of the Law of Nations at Liverpool, the subject of Bills of Lading will, it is understood, form one of the prominent topics of discussion. Mr. Richard Lowndes, Mr. Charles Stubbs, and other members, are already well known to our readers as having treated this important question at previous Conferences. Under present circumstances, there seems a special reason for calling attention to one of the latest decisions in the Supreme Court of the United States;—decisions which, although, of course, not binding here, nevertheless always receive very careful consideration, and are not unfrequently referred to by the Bench as well as the Bar in this country, either by way of support, or for the purpose of distinction. The case of *Pollard v. Vinton*, reported in the *Chicago Legal News*, for June 3rd, and the *Virginia Law Journal* for June, seems the more deserving of attention from the circumstance that Mr. Justice Miller, in delivering the opinion of Court, was led to enter at some detail into the analysis of the character and effects of a Bill of Lading, thus, in fact, giving the Judgment a general as well as a particular value.

“SUPREME COURT OF THE UNITED STATES.

“*Pollard v. Vinton.*

“*In error to the U.S. Circuit Court for District of Kentucky.*

“MILLER, J.—The defendant in error, who was also defendant below, was the owner of a steamboat running between the cities of Memphis, on the Mississippi river, and Cincinnati on the Ohio river, and is sued on a Bill of

Lading for the non-delivery at Cincinnati of one hundred and fifty bales of cotton, according to its terms. The Bill of Lading was in the usual form, and signed by E. D. Cobb & Co., who were the general agents of Vinton for shipping purposes at Memphis, and was delivered to Dickinson, Williams & Co., at that place. They immediately drew a draft on the plaintiffs in New York, payable at sight, for 5,900 dollars, to which they attached the Bill of Lading, which draft was duly accepted and paid. No cotton was shipped on the steamboat, or delivered at its wharf or to its agents for shipment, as stated in the Bill of Lading, the statement to that effect being untrue.

"These facts being undisputed, as they are found in the Bill of Exceptions, the Court instructed the jury to find a verdict for the defendant, which was done, and judgment rendered accordingly. This instruction is the error complained of by the plaintiffs.

"A Bill of Lading is an instrument well known in commercial transactions, and its character and effect have been defined by judicial decisions. It is evidence of ownership, special or general, of the property mentioned in it, and of the right of the holder to the property at the place of delivery. Notwithstanding it is designed to pass from hand to hand, without endorsement, and is efficacious for its ordinary purposes in the hands of the holder, it is not a negotiable instrument or obligation in the sense that a Bill of Exchange or a Promissory Note is. Its transfer does not preclude, as in those cases, all inquiry into the transaction in which it originated, because it has come into hands of persons who have innocently paid value for it. The doctrine of *bona fide* purchasers only applies to it in a limited sense.

"It is an instrument of a two-fold character. It is at once a receipt and a contract. In the former character it is an acknowledgment of the receipt of property on board

his vessel by the owner of the vessel. In the latter it is a contract to carry safely and deliver. The receipt of the goods lies at the foundation of the contract to carry and deliver. If no goods are actually received, there can be no valid contract to carry or to deliver.

"To these elementary truths the reply is that the agent of defendant has acknowledged in writing the receipt of the goods, and promised for him that they should be safely delivered, and that the principal cannot repudiate the act of his agent in this matter, because it was within the scope of his employment.

"It will probably be conceded that the effect of the Bill of Lading and its binding force on the defendant is no stronger than if signed by himself as master of his own vessel. In such case we think the proposition cannot be successfully disputed that the person to whom such a Bill of Lading was first delivered cannot hold the signer responsible for goods not received by the carrier.

"Counsel for plaintiffs however say that in the hands of subsequent holders of such a Bill of Lading, who have paid value for it in good faith, the owner of the vessel is estopped by the policy of the law from denying what he has signed his name to and set afloat in the public market. However this may be, the plaintiffs' counsel rest their case on the doctrine of agency, holding that defendant is absolutely responsible for the false representations of his agent in the Bill of Lading.

"But if we can suppose there was testimony from which the jury might have inferred either mistake or bad faith on the part of Cobb & Co., we are of opinion that Vinton, the shipowner, is not liable for the false statement in the Bill of Lading, because the transaction was not within the scope of their authority.

"If we look to the evidence of the extent of their authority, as found in the Bill of Exceptions, it is this short sentence:

" 'During the month of December, 1873,' (the date of the Bill of Lading), 'the firm of E. D. Cobb & Co., of Memphis, Tenn., were authorized agents of the defendant at Memphis, with power to solicit freights, and to execute and deliver to shippers Bills of Lading for freight shipped on defendant's steamboat, *Ben. Franklin*.'

" 'This authority to execute and deliver Bills of Lading has two limitations, namely, they could only be delivered to shippers, and they could only be delivered for freight shipped on the steamboat.

" 'Before the power to make and deliver a Bill of Lading could arise, some person must have shipped goods on the vessel. Only then could there be a shipper, and only then could there be goods shipped. In saying this we do not mean that the goods must have been actually placed on the deck of the vessel. If they came within the control and custody of the officers of the boat for the purpose of shipment, the contract of carriage had commenced, and the evidence of it in the form of a Bill of Lading would be binding. But without such a delivery there was no contract of carrying, and the agents of defendant had no authority to make one.

" 'They had no authority to sell cotton and contract for delivery. They had no authority to sell Bills of Lading. They had no power to execute these instruments and go out and sell them to purchasers. No man had a right to buy such a Bill of Lading of them who had not delivered them the goods to be shipped.

" 'Such is not only the necessary inference from the definition of the authority under which they acted, as found in the Bill of Exceptions, but such would be the legal implication if their relation to defendant had been stated in more general terms. The result would have been the same if it had been merely stated that they were the shipping agents of the owner of the vessel at that point.

"It appears to us that this proposition was distinctly adjudged by this Court in the case of *Schooner Freeman v. Buckingham*, 18 How., 182.

"In that case the schooner was libelled in Admiralty for failing to deliver flour for which the master had given two Bills of Lading, certifying that it had been delivered on board the vessel at Cleveland, to be carried to Buffalo and safely delivered. The libellants, who resided in the city of New York, had advanced money to the consignee on these Bills of Lading, which were delivered to them. It turned out that no such flour had ever been shipped, and that the master had been induced, by the fraudulent orders of a person in control of the vessel at the time, to make and deliver the Bills of Lading to him, and that he had sold the drafts on which libellants had paid the money, and received the Bills of Lading in good faith.

"A question arose how far the claimant, who was the real owner, or general owner of the vessel, could be bound by the acts of the master appointed by one to whom he had confided the control of the vessel, and the Court held, that having consented to this delivery of the vessel, he was bound by all the acts by which a master could lawfully bind a vessel or its owner.

"The Court in further discussing the question says: 'Even if the master had been appointed by the claimant, a willful fraud committed by him on third persons, by signing false Bills of Lading, would not be within his agency. If the signer of a Bill of Lading was not the master of the vessel, no one would suppose the vessel bound; and the reason is because the Bill is signed by one not in privity with the owner. But the same reason applies to a signature made by a master out of the course of his employment. The taker assumes the risk not only of the genuineness of the signature, and of the fact that the signer was master of the vessel, but also the apparent authority of the master

to issue the Bill of Lading. We say the apparent authority, because any secret instructions by the owner, inconsistent with the authority with which the master appears to be clothed, would not affect third persons. But the master of a vessel has no more apparent authority to sign Bills of Lading, than he has to sign Bills of Sale of the ship. He has an apparent authority if the ship be a general one, to sign Bills of Lading for cargo actually shipped; and he has also authority to sign a Bill of Sale of the ship when, in case of disaster, his power of sale arises. But the authority in each case arises out of and depends upon a particular state of facts. It is not an unlimited authority in one case more than in the other; and his act in either case does not bind the owner even in favour of an innocent purchaser, if the facts on which his power depended did not exist; and it is incumbent upon those who are about to change their condition upon the faith of his authority, to ascertain the existence of all the facts upon which his authority depends.'

"And the Court cites as settling the law in this way in England, the cases of *Grant v. Norway*, 2 Eng. Law & Eq., 337; *Hubbarts v. Ward*, 18 id., 551; and *Coleman v. Riches*, 29 id., 323. Also *Walter v. Brewer*, 11 Mass., 99. See also, *McClellan v. Fleming*, L. R., 2 H. of L., 128; *MacLachlan's Law of Merchant Shipping*, 368-9.

"It seems clear that the authority of E. D. Cobb & Co., as shipping agents, cannot be greater than that of the master of a vessel, transacting business by his ship in all the ports of the world.

"And we are unable to see why this case is not conclusive of the one before us, unless we are prepared to over rule it squarely. The very questions of the power of the agent to bind the owner by a Bill of Lading for goods never received, and of the effect of such a Bill of Lading as to innocent purchasers without notice, were discussed and were properly in the case, and were decided adversely to the

principles on which plaintiffs' counsel insist in this case. Numerous other cases are cited in the brief of counsel in support of these views, but we deem it unnecessary to give them more special notice.

"The case of the *New York and the New Haven R. Co. v. Schuyler*, 34 N. Y., 65, is much relied on by counsel as opposed to this principle.

"Whatever may be the true rule which characterizes actions of officers of a Corporation who are placed in control as the governing force of the Corporation, which actions are at once a fraud on the Corporation and the parties with whom they deal, and how far Courts may yet decide to hold the Corporations liable for such exercise of power by their officers, they can have no controlling influence over cases like the present. In the one before us it is a question of pure agency, and depends solely on the power confided to the agent.

"In the other case, the officer is the Corporation for many purposes. Certainly a Corporation can be charged with no intelligent action, or with entertaining any purpose, or committing any fraud, except as this intelligence, this purpose, this fraud is evidenced by the actions of its officers. And while it may be conceded that for many purposes they are agents, and are to be treated as the agents of the Corporation or of the Corporators, it is also true, that for some purposes they are the Corporation, and their acts as such officers are its acts.

"We do not think the case of the *R. R. Co. v. Schuyler* presents a rule for this case.

"The judgment of the Circuit Court is affirmed."



IV.—SCRUTIN DE LISTE, AS MODIFIED BY THE ITALIAN PARLIAMENT.

AN Act just passed in Italy, as a complement to the National Parliamentary Reform, adopts that form of Electoral procedure which is known under the name of *Scrutin de Liste*. Its working at the coming Elections will serve to demonstrate practically, whether it is preferable for the Constituencies to be divided into small districts each of which elects but one member, each elector writing the name of a single candidate on his voting paper; or whether it is preferable for the Constituencies to be divided into large districts each of which may return several members, the voting paper of each elector containing as many names as there are members assigned to his district. Speaking of the system called *Scrutinio di Lista* one must necessarily examine the phases through which the question has passed in France, where it had its origin, where it was revived, and where it has been developed side by side with Italy, although with different success. For in Italy the adoption of the *Scrutinio di Lista* has been, so to say, the crowning of the edifice of Electoral Reform, while in France its rejection caused the fall of its principal advocate at the time he had attained the climax of his power and seemed as if he alone had not only the destinies of his country in his hand, but also the peace or war of Europe in the folds of his garments. It would be too long, though perhaps not devoid of interest, to sum up all the arguments alleged for or against the *Scrutinio di Lista*. In the discussion of these great reforms a free course is usually given in political assemblies to the wildest exaggerations. To the supporters of a reform it seems that the greatest evils will befall the country unless it is adopted, while to its

opponents it appears evident that it will be the beginning of unheard of calamities. Thereupon both supporters and opponents vie with one another in attributing to it imaginary merits and faults, and founding upon it the most contradictory predictions, which are afterwards completely refuted by practical experience. The now celebrated expression of an English statesman "a leap in the dark" may well be applied to every electoral reform whatever it be, and therefore the artifices of the different parties to modify it so as to render it favourable to themselves respectively appear useless. This is natural. The mechanism of all political proceedings can have but a very limited influence on the social body, of which the most complicated evolutions are set in motion by many and various causes.

An illustrious man, whose loss Science has lately lamented, Littré, in his early enthusiasm for the Positivist system of Comte, had wished to apply it to the political events of his time, predicting with confidence the results which they would have. During the latter years of his life, wishing to republish the work containing those ideas, he remarked with melancholy how not one of his forecasts had been realised, and laughed at the human conceit that thinks it can penetrate with its sight into the depths of the future.

One of the most celebrated English philosophers, Herbert Spencer, who is very popular in Italy, has devoted one of his works to demonstrate the difficulties and the prejudices which obscure the right appreciation of social phenomena. One of the examples which he alleges is English Parliamentary Reform. Here are his words:—"Both advocates
" and opponents of the first Reform Bill anticipated that
" the middle classes would select as representatives many
" of their own body. But both were wrong. The class-
" quality of the House of Commons remained very much
" what it was before. While, however, the immediate and

"special result looked for did not appear, there were vast
 "remote general results foreseen by no one. So, too, with
 "recent changes. We had eloquently uttered warnings
 "that the delegates from the working classes would swamp
 "the House of Commons; and nearly everyone expected
 "that, at any rate, a sprinkling of working-class members
 "would be chosen. Again all were wrong; the conspicuous
 "alteration looked for has not occurred."

Similar remarks may be applied to France, where considerations of personal profit or loss had the greatest influence in determining the action of the parties with regard to the *Scrutin de Liste*. And yet there can be no example more instructive than the system which they followed, because it has always worked in a direction opposed to the purpose of those who had established it.

The Republican Left of the Constituent Assembly thought in 1848 to secure a majority maintaining the *Scrutin de Liste* in the Constitution. There never was a more cruel disappointment. The party came out decimated by the elections of 1849, losing many of its leaders, Lamartine among the rest, who had played such an eminent part in the establishment of the Republic, and who, when meditating on his own discomfiture, was led to call the *Scrutin de Liste*—*le cas et le mensonge organisé*—organised chance and falsehood. The elections of 1871, made by *Scrutin de Liste*, gave power to that Conservative majority which attempted the Monarchical restoration. Well, that majority thought it was providing for its own benefit in introducing into the Constitutional Law the uninominal vote, the immediate result of which was the dispersion of those very individuals who had given themselves so much trouble to establish it. Others lay down on the bed which they had prepared for themselves. *Sic vos non vobis nificatis, ave!* Lately Gambetta thought the *Scrutin de Liste* would have smoothed his way to the dictatorship by giving him a subservient

majority all of one political colour. Had he not been overthrown before he carried out his pious design, we might possibly have witnessed another disappointment.

In Italy those who found their greatest hopes on Electoral Reform belong to the Radical party, which proclaims it as its own special property, and prepares itself to meet the contest with a bold front. How far that confidence is justified we cannot yet say. I have myself, up to the present time, fought in the ranks of the Moderate party, and at the coming elections I shall perform my duty at the post that may be assigned to me. But I dare not advance any prognostication. The substantial alterations in the electoral body; the want of political organization in the country; the state of transformation of political parties, which frequently appear on the scene with new programmes, and for whom a new era begins; the uncertainty whether the Clericals will or not take part in the elections, in the former case by their intervention greatly modifying the arrangements and the coalitions of parties; all these are elements which contribute to darken the veil which conceals the electoral urns from our sight. I abstain therefore from examining the question from this point of view, and I start from a more general platform.

The *Scrutinio di Lista* was part of the general project of Electoral Reform offered to Parliament by the present President of the Council of Ministers, Depretis. It was quite a new idea. It came out as a surprise, more unexpected by the public than the extension of the Franchise, for which, although there had not been popular agitation, there had been at least some movement, though limited to the cultured classes: a movement in which those had taken part who already possessed the right to vote, but to which those who had been hitherto excluded, and on whom it was desired to confer the right, had remained indifferent. Nothing had happened which could be likened to the

agitation preceding the Parliamentary Reform in England, an agitation which revealed a want that had deeply penetrated the national conscience. The eloquent pages written by Thomas Buckle in his *History of Civilisation in England*, to show that Governments do not resolve on great Legislative Reforms 'unless the whole nation imperiously claims them, cannot be applied to the Italian Electoral Reform. Therefore, although in Parliament an extension of the Franchise was deemed indispensable, a project of reform through which the electors were raised from 600,000 to 2,000,000, was approved by a strong majority indeed, but without any enthusiasm. The *Scrutinio di Lista* met with a reception quite unfavourable, and the Ministry was so struck with it that fearing lest this aversion should cause the whole law to fall through, they consented that this special clause should be struck out and reconsidered at a more propitious time. The opponents to the *Scrutinio di Lista* thought that such a suspension was equivalent to its rejection. It was on the contrary its salvation, for, when it first was brought up for discussion, it would have been sure to be negatived; by obtaining time it acquired partisans, it insinuated itself into people's minds, and on a second trial came out victorious. Signor Depretis, whose sincerity has sometimes been doubted by politicians, but never his parliamentary dexterity, affirmed what was quite true, when in the discussion he said that in a year the *Scrutinio di Lista* had gained ground. In fact the special law, in which it had been reproduced, approved by a considerable majority of the Chamber of Deputies, and again quite lately by the Senate, is now part of the Law of the Land, which will rule the general elections this autumn. I will now offer a short analysis of the law :—The 508 members are elected by 135 Constituencies, which, according to their extent, return 5, 4, 3, or 2 members respectively. In the Constituencies returning 5 members the elector writes on his voting paper

only 4 names. At the first *Scrutinio* those are elected who have obtained the great test number of votes, provided that number exceeds one-eighth of the registered electors. If that proportion is not attained a new ballot is held on a following day. It may easily be seen from this sketch that the *Scrutinio di Lista* lately adopted by Italy is not the classical *Scrutin de Liste* of the French school, but something between that and the uninominal voting paper. The circumscription of the Italian Constituencies does not coincide, except in a few cases, with that of the province which forms the unit of the French system, but corresponds in many cases with the three-cornered Constituencies of the English electoral system. I, for my part, consider this limitation of the Italian law very wise.

It has been rightly remarked in criticism of the uninominal Constituency that it establishes too narrow an area, and one where local mediocrity, municipal *coteries*, village-green interests and ideas, and personal considerations hold sway unopposed and prevail over political considerations in prompting and determining the Elections. All that is perfectly true, and quite sufficient in my opinion, to condemn uninominal Constituencies. Still one must guard against falling into the opposite error, bearing in mind the saying, *incidit in Scyllam-qui vult vitare Charybdim*. The too narrow area must not be so excessively widened as to possibly deprive the elector of a sufficient knowledge of the candidate, and hence of the power of giving a conscientious vote. This consideration acquires greater importance in Italy from the extension of the Franchise which has been granted at the same time. In the first discussion in the French assembly, M. Dufaure, then Minister, observed that the country-folks go from the house to the fields, and from the fields to the house; all their existence revolving within that circle. In order therefore to render the electoral urn more accessible to them, the Elections, both

in Italy and in France take place on Sundays, the polling booths are, as much as possible multiplied, each Commune having one in France. In short, every possible facility is afforded for the exercise of the right to vote. Now by what logical argument can it be maintained that such men ought to vote with other districts, with which they have no connection, and for candidates whom they do not and cannot know, and that they ought also to share in the organization and preparation required in a large circumscription? This they practically cannot do. Some one then will do it for them. If they are not capable of making up a list with ten or twenty names, there will be some one who will hand them one ready-made. Who will undertake to do that? The Committees. Who will compose these Committees? If the electoral district is not so extensive as to prevent all healthy local influence, such as results from an unblemished reputation, a life spent for the welfare of the country, it may reasonably be hoped that at the head of these Committees will be found persons deserving of public esteem; but if the districts are so vast that those influences may be lost, then the field remains open to intriguers, professional agitators, traders in politics, and then we have a *Caucus* in the worst meaning of the word—that is, not the regular organization of a party, but the prevalence of its most turbid and dangerous elements. Reybaud, in his *Jérôme Paturot à la recherche de la meilleure des Républiques*, which is a perfectly charming satire on the Utopias of French Radicalism, has depicted in lifelike colours the tyrannical ways in which the Committees were worked in the elections by *Scrutin de Liste* in 1848. In the recent discussion in the French Assembly, Gambetta endeavoured to ridicule the threats of that spectre, the fear of that occult power, that Electoral Vehmgericht of the Committees. But I believe that such a danger does really exist, and that the only way of pre-

venting it is not to extend the electoral district too much.

It cannot be denied, on the other hand, that a small uninominal district is a source of corruption. The too close bonds which unite the electors to their member, make of him a business agent, a pleader for private interests, from whom all the electors claim his assistance and service, and his influence in administration of justice and of local interests. To that indirect form of corruption is often joined a more direct one, since the scanty number of electors in a small electoral district makes the venality of voters easy. This, I fear, happens more or less everywhere, since a small district is like a pond, in which stagnation of necessity induces putrefaction. As to the effects which it produces in England, I am not competent to speak. I believe, however, that I am not much mistaken in affirming that corruption in the small districts is very extensive, although it may not attain such a high degree as was manifested in the towns of Oxford, Gloucester, Macclesfield and others, over which the threatened punishment of a temporary disfranchisement is hanging.

What the small Electoral district proved itself to be in France under Louis Philippe, we are told in the burning words of Armand Carrel, Paul Louis Courier, and Louis de Cormenin, who have held up to condemnation that corruption which a man so eminent as Guizot did not know how to abstain from allowing. What that same corruption was under the Second Empire, the sad notoriety of the *candidature officielle* has revealed. Neither does it work better under the Republican régime.

In the Italian Constituencies, it may be affirmed, that trading in votes was limited to a very few cases; on the other hand, all too extensive was the indirect corruption by which a member held his supporters close in hand by getting honours conferred upon them; by upholding their preponderance

in the Municipal administration; by obtaining reprieve or diminution of punishment for them when falling under the rigour of the law; by causing functionaries obnoxious to them to be removed; and by backing them up in their transactions with the Government, obtaining for them favours, advantages, privileges, or even material gains. The spreading and the deep root of these pernicious customs, derogatory to the dignity both of the electors and the elected, has urged Parliament to dry up their source by suppressing the uninominal Constituencies. The majority of the Moderate Liberal party, although it acknowledged the evil, was still opposed to the *Scrutinio di Lista*, and proposed other remedies in its stead. Signor Minghetti, who, if not the first of Italian statesmen for acquaintance with the practical art of government, is certainly one of the very first in eloquence and learning, in a book where he reviews all the evils and inconveniences which affect the Parliamentary system, pleads for an ample Decentralization, the responsibility of Public Officers, the suppression of many arbitrary privileges which the law grants them, and finally for justice in the administration, which Signor Spaventa had already loudly demanded. While joining in all these demands, I remain of opinion that the *Scrutinio di Lista* will also efficiently contribute to that effect. And though I do not share the unbounded confidence which Signor Zanardelli, who has been its most zealous advocate places in it, I yet cannot, like Minghetti, feel distrust of it. Much less can I agree with the illustrious political and scientific luminary, Quintino Sella, who has shown so much aversion to it as to decline the command laid upon him by the King to form a Ministry, because he could not agree with his colleagues on the subject of the *Scrutinio di Lista*. However, we have in Italy a fair opportunity of comparing the Political with the Municipal elections, in which latter no corruption is or could be detected, because carried out on the principle of the *Scrutinio*

di Lista. In England, on the other hand, where the Municipal Councillors are elected by wards, it is found that, where there is corruption in the Political Elections, there is it also in the Municipal. Thus in the Report of the Royal Commissioners appointed to inquire into the existence of corrupt practices in the City of Oxford, I read as follows:—"Politics have for a considerable period largely influenced the municipal elections for the different wards, and although the expenditure at these elections has been far below that incurred at the Parliamentary elections, it is certain that money has frequently been expended in the municipal contests in ways which would not bear the light." I believe that in England also a reform, based on that lately adopted in Italy, would raise a bulwark against corruption. Lord Brougham has already pointed this out in his well-known work on the English Constitution, in these remarkable words:—"It is certain that bribery is confined to the towns, and to those generally speaking of a moderate size; that in hardly any of the very large ones does it prevail at all; that in none of the counties is it known. The right course, it should seem, is to choose the members not by towns and counties, but by districts composed of town and country together. Nor can there be any valid objection to thus blending the town with the country. Nay, were there even an objection, it must be a very formidable one to counterbalance the mighty benefit of putting down the pest of corruption, which threatens our national morals as well as the purity of our parliamentary system and the existence of our free Constitution."

Against the moderately extensive Constituencies of the Italian law objections were raised in Parliament by the partisans of the opposite extremes. Those who wished for very large Constituencies wanted to destroy absolutely all local influences, affirming that this was the only way to fill

Parliament with the best men. To this we may answer first of all that industrious and modest mediocrities are a necessity in legislative assemblies, and that it would be impossible to govern a country with a Parliament composed of great intellects exclusively, who, of course, would all claim to have their say in every discussion, and would all aspire to a seat in the Ministry. As chiefs are necessary, so are also rank and file; nay, nothing can be worse for discipline and compactness, whether in an army or in a Political party, than to have too many chiefs or leading men. Besides, the virtue of choosing illustrious men is not possessed by the very extensive Constituencies: I believe that they prefer colourless candidates. Men of mark will rise under any system whatever. In Italy, as in England, many distinguished statesmen are elected by small Constituencies; nay, they have often found there a refuge when abandoned by large ones. We can therefore reckon that a country will always produce a sufficient number of distinguished men under any system. When in the House of Commons the Electoral Reform was under discussion in 1831, Macaulay very properly remarked in one of his speeches:—"In whatever way the House of Commons may be chosen, some able men will be chosen in that way, who would not be chosen in any other way. If there were a law that the hundred tallest men in England should be Members of Parliament there would probably be some able men among those who would come into the House by virtue of this law. If the hundred persons whose names stand first in the alphabetical list of the Court Guide were made Members of Parliament there would probably be able men among them."

The objection of the partisans of the uninominal vote is against the inequality of the number of representatives ascribed to different Constituencies. It is said that an elector in a Constituency which returns four members

exercises a right twice as great as an elector who belongs to a Constituency which returns only two.' This, I think, is a fallacy, as the elector who takes part in the election of two members exercises his right in common with say 10,000 other electors, while the one who elects four exercises his right in common with say 20,000 other electors. It is, therefore, not one elector who elects two members, but 10,000 who elect two, and 20,000 who elect four. And this is in accordance with justice. If it were possible to unite the whole nation into one Constituency, as has been proposed by Thomas Hare, would the right of the electors, who should thus take part in the election of 508 members, be more important or more extensive than that which they had previously exercised in electing one member in the uninominal Constituencies? It is evident it would not; therefore this objection, which originated in that love of equality and symmetry inborn in the Latin races, and which cannot well be applied to the varied and complex social organism, has no real value. These inequalities are unavoidable in any system whatever; nor are they avoided in the uninominal Constituency. In France an *arrondissement* with 95,000 inhabitants, forms a Constituency, and returns one member, whereas an *arrondissement* with 105,000 inhabitants is divided into two Constituencies, and returns two members. In Italy, the Constituency of Benevento, with 25,000 inhabitants, has hitherto returned one member, like the first *collegio* of Palermo, with 80,000. But what of that? It would be absurd to require that the Constituencies of any country should have the regularity of a chess-board. From what I have already said, it results therefore that the new Constituencies of the Italian law, whilst they mark an advance on the uninominal Constituencies, will also avoid many of the inconveniences of the *Scrutin de Liste* of the French school, or at least will modify them. I spoke last year at a great meeting of the Political party to which I

belong, summing up my opinion on the Electoral Reform Bill in the following words;—"This system may be said to be an improved *Scrutin de Liste*, which preserves the character of a collective election, without the inconvenience of having too long a list or too large a Constituency. It is equally free from the evils of a too extended district, and from the immediate contact of elector and elected in a narrow district, since the candidate is not quite a stranger to the electors, as in the Provincial Elections, while yet not so bound up with them as in the uninominal Constituency, in which he cannot, without peril to himself, devote himself to the general interest instead of the interests of a Commune, of a family, or even of one individual. In this intermediate Constituency, the elector is not subject to be surprised by an unknown candidate, as in the Provincial Elections, or to the corruption, which may prevail in the present Constituencies. The horizon now open to him is wider than heretofore, and he is able to soar above private interests, though still not so high as in the Provincial Elections, where he may perchance see nothing at all."

Before concluding I must examine one very important point. Does the *Scrutin de Liste* reproduce as its result the physiognomy of the electoral body in such a manner as to be a true and genuine representation of the country? It may do so, but on one condition, that is, that it be coupled with one of the systems that have been proposed to secure also the representation of minorities. That question, therefore, must be answered in the negative for the *Scrutin de Liste* of the French school, and only partially in the affirmative for the *Scrutinio di Lista* enacted by the Italian law. In the French Assembly, Gambetta said that the *Scrutin d'Arrondissement* is the image of the country in a broken mirror; one might have answered him that the *Scrutin de Liste* according to his system may have been the

image of the country in an unbroken mirror, but that the image reproduced was a distorted one.

The system of Proportional Representation seems to be unintelligible to the French Political Schools, which, save individual exceptions, be they Conservative, Liberal or Radical, are always metaphysical and *doctrinaire*. That system, on the only occasion on which it was proposed to the French Assembly, was rejected by an immense majority with scarcely even the honour of a discussion. Now, without that corrective, the *Scrutin de Liste* not only does not give to parties the importance they must have according to the number of votes which they can command in the country ; it not only makes it impossible for some views to be represented ; but it may entirely falsify the will of the nation by giving the majority in the House to those who are in a minority in the electoral body. "And herein it deserves not only the severe sentence of Lamartine which I have quoted, but also that other of Laboulaye, who called it a mere "mystification, unworthy of a free nation."

The prevalence of minorities through greater ability and activity, is a phenomenon which we frequently see. Our great poet Giusti has wittily remarked :—

*Che i più tirano i meno è verità
Posto che sia nei più senno e virtù,
Ma i meno, caro mio, tirano i più
Se i più trattiene inerzia o asinità.*

"That the many draw after them the few is indeed true, provided wisdom and virtue be with the many ; but the few, my friend, draw after them the many, when the many are sluggards or fools."

And this is only right. But an electoral system which of itself produces such an effect cannot bear the most elementary criticism, and that is quite sufficient for its condemnation without appeal. I therefore sum up my

opinion thus. The *Scrutinio di Lista* tempered by the Proportional Representation of minorities, is by far preferable to the uninominal Constituency; the uninominal Constituency is preferable to the *Scrutinio di Lista* without that corrective. And the great Patriot, whose name is indissolubly connected with our glorious national resurrection, Count Cavour, declared himself favourable to the uninominal Constituency for the sole reason that the multiplicity of circumscriptions affords greater facilities for minorities being represented.

It may suffice to prove the fallacy of the *Scrutin de Liste* pure and simple, if we cast a glance at the Presidential election in the United States of America, which is carried out on that system by the selection of the electors in the second degree. In 1860 Lincoln obtained 1,867,000 votes from universal suffrage and 180 from the Presidential Constituency, and was proclaimed elected, whilst his competitor with 2,801,000 votes from the universal suffrage had only 123 from the Presidential Constituency. Lincoln, therefore, with a minority of supporters in the country obtained a majority in the Presidential Constituency. Moreover, of the competitors with Lincoln, Douglas, who had a number of votes almost equal to his, that is 1,376,000, had only 12 electors in his favour; while Breckenridge, with 836,000, had 72; and Bell, with 590,000, had 39. So in 1875, instead of Tilden, who had a majority of votes in the country, Hayes was elected, who had obtained a minority; and so also in 1880, General Garfield had two-thirds of the votes of the Presidential Constituency, although in the country he had only a majority of 3,400 out of 9,000,000 of voters. How this happens is very simply explained. The majority of one vote in the State of New York suffices to secure thirty-five representatives, while one of twenty thousand in Colorado would secure only one. And if by a practically impossible hypothesis it should be attempted as

a remedy to create Constituencies all equal, the disproportion would not be avoided, because a difference would always result from the majorities and minorities of each Constituency; and the minorities of the greater number of Constituencies joined to the majority of the smaller number may form the majority of the nation. Hence we have on one hand the danger that the real majority may have a smaller number of representatives, as on the other hand it may have an excessive number of them, when, by the distribution of its votes, it can secure a preponderance of votes, however small, yet in a great number of Constituencies. I say, then, that this alone would suffice to demonstrate the necessity of Proportional Representation of parties, besides all the other reasons alleged by its supporters, many of which have been set forth at length by Stuart Mill in his work on Representative Government.

I will here mention three special advantages which that system offers to Italy. Firstly, it removes one of the principal motives of the hitherto numerous abstentions. Secondly, it renders useless the personal coalitions among candidates of different parties, which certainly do not improve the national character. And, thirdly, it takes away from the Parliamentary parties all local colour, by rendering impossible what does now happen, and would still more frequently happen with the extending of the Constituencies, which is, that some Provinces have all their members belonging to the Left, others all belonging to the Right. It has been calculated that if the *Scrutinio di Lista* had been enacted at the time of the elections of 1876, no member of the Right would have been elected in Southern and Insular Italy. And, again, no member of the secessionist Left would have been elected in 1880 in North and Central Italy, so that we might have seen in the Italian Parliament two parties with a very pronounced local character.

The maxim of the representation of minorities was loudly proclaimed in the Italian Parliament. One of the most prominent members of the Radical party, Signor Bovio, to combat it, said :—" If minorities wish to be represented, let "them become majorities." That sentence some thought contained a deep meaning ; in my opinion it is devoid of all meaning, for if a minority becomes a majority, that can only happen by the majority becoming in its turn a minority, and therefore the state of the question remains still the same. Against the representation of minorities there rose, besides the Radical party, Signor Crispi, the chief of the so-called Historical Left, a designation of which on this occasion it showed itself well worthy, for by combating a principle which is the offspring of the most recent studies and of the latest evolution of sound Constitutional principles, it has given evidence of having halted at the antiquated premises of the Constitutional doctrinism of twenty or thirty years ago. Crispi is certainly one of the most important political men in the Italian Parliament, but his speech on that occasion was erroneous in its calculations, inexact in its historical comparisons, and weak in its arguments, which were easily combated by a masterly speech of Minghetti, and by that also of the young member Genala, who has made an active propaganda, and written a much valued book in favour of the representation of minorities.

Still, although the maxim of the representation of minorities has been adopted by the Italian Parliament, its application was made in a very homœopathic dose. The minority had at first proposed to apply it to the *Constituencies* which return four members, and the Commission, who at first wanted to extend it to those also which return only three, yielded at the eleventh hour, with reprehensible weakness, to the pressure of the Extreme Left, and its application was limited to* the colleges returning five members, which are thirty-three out of one hundred and

thirty-five. This limitation was confirmed by the Upper House, which threw out also the motion, tentatively advanced, to increase the number of Constituencies returning five members. In my opinion the application of that principle within such narrow limits is quite insufficient. But while I deplore that the Constituencies returning three and four members were thus excluded, I hope that the next Legislature will amend that omission. An association, at the head of which is the venerable Senator Mamiani, had, several years since, constituted itself to make popular the principle of the Representation of Minorities. It has now begun a new agitation, to which, I hope, the public opinion of the country will give a valid support.

Simple and clear as the principle of Proportional Representation is, it proves none the less difficult in its practical carrying out. The most perfect method is that of taking a quotient as suggested by Hare, that is, on the understanding that the names of the candidates are inscribed on the list in the order of preference, the first name only is read and considered as elected when it has attained the quotient, which results from dividing the number of electors by that of the representatives to be elected. Then that name is no longer reckoned in the successive voting papers; in these the name coming immediately after is held in account, and so on for the others. This method is, however, too complicated. Bagehot, in his excellent work on the English Constitution, tells us of a friend of his who could not keep it in his memory during two days running. It would probably be the same with most of the electors.

Strange and uncertain results would be got by the so-called *cumulative vote* and *single vote*. By the first the elector is empowered to accumulate his votes upon a number of candidates inferior to that of those to be elected, or even upon one only. By the other, whatever be the number of

candidates to be elected, the elector has only one vote, so that it might be styled a *Scrutin de Liste* without a *Liste*. Yet these methods have been actually tried, and in some places are still in operation. Even more difficult would it prove if the so-called *voluntary Constituency* were tried. By that the electors of the whole nation ought to assemble of their own accord in Constituencies or groups, in a number that should be fixed, to have the right to elect one representative. Similar capital defects are found in several other proposed systems analogous to those just mentioned. The system of a *limited vote* adopted in the Italian law is the simplest and the easiest, and therefore most practical. It works well already, both in Spain and in England, where, to the credit of the House of Lords, it was introduced in 1867, when a Liberal and a Conservative—Lord Russell and Lord Cairns—again proposed and caused the passing of the *minority clause* for the twelve Constituencies having more than two members, a clause which, in the House of Commons, when proposed by Lowe and Stuart Mill, had been thrown over by the joint opposition of Disraeli, Gladstone, and Bright.

True, this system does not always attain its end. We have seen it in Birmingham, where the Liberal Party, by dividing its votes with great dexterity and discipline, has succeeded in electing Messrs. Chamberlain, Muntz, and Bright. In 1880, Glasgow similarly succeeded in electing three Liberals. Thus also lately in Italy, in the Provincial Council of Naples, the majority succeeded in excluding the minority from the Committee of Appeal for the revision of the electoral lists, which is selected on the system of limited voting. Yet that can only happen exceptionally with a very strong and well-marshalled majority. Exceptional are also the vacancies occasioned in the seats of members elected by minorities, through resignation or death, in consequence of which, in a Constituency voting for a single candidate the majority may regain that seat. As to

vacancies arising from acceptance of office or promotion, it would be expedient, to abrogate that measure, which no reason justifies. I may therefore conclude that the advantages of the limited vote overbalance its few incidental disadvantages. I cannot, however, approve the restriction in the Italian law which prescribes a second ballot if the candidates have not obtained the votes of one-eighth of the inscribed electors. Signor Brioschi very wisely proposed the suppression of that article, in the Senate, and it must be deplored that the Upper House has not drawn from the conscience of its mission the strength to approve either that or other amendments which would have greatly improved the Law.

And here I end my rapid survey. I have tried to explain as well as I could the mechanism of our new Electoral procedure, mentioning, which parts I consider sound, and which less promising of good result. The decisive judgment arising from the experience of the coming General Elections will prove interesting not only for the Italians, but for statesmen in all nations. As to the Italian statesmen they must bear in mind that the passing of the law has not ended their task, but lays upon them new duties and a necessity for redoubled activity. They must set their hands to the improvement of the Political education of the nation, to diffuse the sentiments of morality and order into the new classes they have enfranchised. Now more than ever the oft repeated, but not for that less opportune exhortation of the great patriot, Massimo d'Azeglio, acquires fresh importance: "Italy is made; we must now make the Italians."

TOMMASO TITTONI.

V.—THE LAW OF NATIONS IN PEACE AND IN WAR.

WITH the evidence rapidly accumulating before our eyes of the growth of Societies for the Scientific Study of the Law of Nations, and of the publication of works setting forth its latest developments, it seems impossible to doubt that a great and real progress is being made in the *Jus inter Gentes*.

The meetings of Jurists, Statesmen, and others directly interested in the formation of a true Science of the Law of Nations, which were held at Ghent and Brussels in the autumn of 1873, and which laid the foundations respectively of the Institute of International Law and of the Association for the Reform and Codification of the Law of Nations, soon began to bear good fruit. The practical utility of both Societies has been recognised by the cordiality of their reception in the various countries in which their subsequent meetings have been held, and by the influence which their deliberations have manifestly exercised upon contemporary Thought and Literature. This influence has been felt by the Universities of our own and of other lands. It has now extended to Royalty, and it is with very sincere pleasure that we here record the recognition by the King of Italy of the services rendered to International Law by our valued *confrère*, Professor Rivier, in conferring upon him the distinction of a Commander of the Order of the Crown of Italy. Laurels such as these, won in the service of that "Pax hominibus," which was among the last aspirations of Bluntschli, may well be worn with pride, for they have been won in the best of Causes.

The idea put forth at the outset, alike at the Ghent and Brussels meetings, in 1873, that it would be possible by a strict scientific process to arrive at something like the

Codification of the Law of Nations, has found its fullest expression in the very elaborate scheme of an *International Code*, - by Hon. David Dudley Field, LL.D.,* now before us, and which M. Albéric Rolin has recently placed within the better grasp of Continental Jurists generally by his valuable French translation.

Mr. Dudley Field's work is the most substantial result of a Committee appointed by our own National Association for the Promotion of Social Science at the Manchester meeting in 1866, before either the Institute or Association had sprung into being. In a certain sense, therefore, Great Britain may claim a species of parental right, not only in Mr. Field's *Code*, but also in the central idea of which it is the practical expression.

The direct action of the two Societies founded in 1873 may be traced to a great extent in the pages of this Review, where their progress has been chronicled from time to time. Of the Foundation Conference of the Association at Brussels, in 1873, certainly one of the most interesting International gatherings of recent days, a full account was given in our pages (*Law Magazine and Review*, for December, 1873), by one who had taken part in the meeting. Since 1875, the Annual Reports of the Association,† which is very shortly to hold its Tenth Conference in Liverpool, have been noticed by us in more or less detail, and the learned and interesting Presidential Addresses by Lord O'Hagan, Sir Robert Phillimore, Sir Travers Twiss, and others who have occupied the Chair, have been also brought before our readers. The very valuable Papers in which Sir Travers Twiss has discussed not a few of the most burning questions of the day in International Law have often been

* *Outlines of an International Code*. (New York. 1876, Second Edition. London: Stevens and Sons.) Mr. Field's work was some years since translated into Italian by Professor Pierantoni, with an Introduction on the "Reform of the Law of Nations" (Naples. 1874).

† Published at the Offices of the Association, 33, Chancery Lane,

the subject of special and separate notice. The work of the Institute during the same period is to be sought practically in two principal sources, viz., the *Annuaire*, and the *Revue de Droit International*, both now published in Brussels,* under the able editorship of Professor Rivier. We have before now spoken of the high value of both publications as storehouses of knowledge for the Statesman and Diplomatist as well as for the Jurist. And the same commendation must again be extended by us to the extremely valuable materials published in the *Annuaire*, the *Bulletins*, and the *Collection de Codes Etrangers*,† published by the Society of Comparative Legislation in Paris. These should all find their places side by side on the shelves alike of the politician and the practitioner, to both of whom it may be important, at any moment, to have ready to hand the latest information as to Foreign Laws. Indeed, the bearing of the work of the *Société de Législation Comparée* on the scientific study of International Law is so direct that we feel bound to draw attention to it in the present article. It will, of course, be obvious that the Comparative method is involved in the most strictly scientific aspect of that study.

It has already been seen that, much as we are indebted to American and Continental writers, we are not without considerable obligations to our own countrymen. While we cannot forget Beach Lawrence and Dudley Field, so neither do we omit to acknowledge our indebtedness to Phillimore, Twiss, Hall, and others.

Of Mr. Hall's work‡ we have already spoken here, and we shall probably return to the consideration of some of his views in the course of the present Paper, many most in-

* Librairie Muquardt: Merzbach and Falck. Brussels and Leipzig.

† Cotillon. Paris. The latest Foreign Code published by this Society, and which is now before us, is the German Code of Commerce. Edited, with full Notes, &c., by MM. Gide, Flach, Lyon Caen, and Dietz. 1881.

‡ International Law. Oxford: Clarendon Press. 1880.

interesting points having been of necessity left untouched. From Sir Robert Phillimore we welcome with great pleasure the continuance of his careful and interesting revision of his standard *Commentaries*,* regretting only the limited extent to which the publication of the revision has as yet been carried. The text of the second volume, now published, is itself full of matter of deep and permanent interest, such as the Rights of Equality, of Sovereignty, of Legation, the Obligation of Treaties, &c. And in Part III., on the "International Status of Foreign Spiritual Powers, especially the Papacy," with the relative Appendix, we have a mass of valuable matter on a question which may at any moment be made European. For the present, the Prisoner of the Vatican is content to hug his chains, and protest against the "Revolution," the "Sub-Alpine" King, and other such enemies of Holy Church for whom the Curia has a stock of epithets always ready to fit into the text either of an Allocution or an Encyclical, or wherewith to point the moral of an article in journals under the inspiration of the school represented by the *Civiltà Cattolica*. The recent works of M. Nys and M. Ollivier on the Papacy should alone suffice to warn us that there may be one day an International Papal Question, and it is impossible to tell how soon it may come. When that day comes a special value will attach to the documents which Sir Robert Phillimore has brought together in the new issue of Vol. II. of his *Commentaries*, as well as to the text in which he considers the subject-matter of those documents. Those who have most carefully studied the remarkable utterances of Theiner and Curci† will best appreciate the essential unity

* *Commentaries on International Law*. Vol. II. Third Edition, Butterworths. 1882.

† Theiner's *Correspondence with Döllinger and Friedrich*, published in recent numbers of the *Foreign Church Chronicle* (Rivington, 1882), throws no little light on the attitude of the Curia: while Curci's *Moderno Dissidio*, and his still later *Nuova Italia e i Vecchi Zelanti*, bears out all that has been said by us above.

and unchangeableness of the *Vecchi Zelanti*, and their hatred of the *Nuova Italia*. The world changes, but the Church (as this party understands it), is unchanging: "*Stat Crux dum volvitur Orbis*," the Curialists would probably say, if they thought it necessary to explain their position.

It would be interesting, did space admit of the undertaking, to trace out the workings of the minds of the several contemporary text-writers now under consideration on points where their views at least appear to differ. This, however, could at best only be attempted in a very cursory manner. But we may draw attention to one important point connected with the right of Legation where, as it seems to us, there is a difference between the view of Sir Robert Phillimore and that of Mr. W. E. Hall.

In a Paper read before the Jurisprudence Department of the recent Social Science Congress at Dublin, it was argued that Mr. Hall minimised the privileges which we should contend are necessary to the due liberty of a Diplomatic Envoy, for the useful carrying out of the purpose for which he is appointed. Sir Robert Phillimore, *per contra*, demands for the Envoy all that can fairly be demanded on his behalf. The point of divergence appears to us to be discoverable at the *jus transitus innoxii*, for which we certainly contend, with Sir Robert, and against Mr. Hall, if we correctly read the meaning of his language. We must observe that if the Diplomatic Agent is not to enjoy this safe travel, there seems little visible use in appointing him. It is probable that Mr. Hall may not have intended to restrict the *jus transitus*, but the general tenor of his argument leaves distinctly left that impression upon us, and, if we have rightly apprehended that argument, we can only regard it as the index of a retrograde movement. We are quite unable to see how it is possible to minimise the privileges now recognised as belonging to the Legatine function without seriously hindering the peaceful intercourse of the Nations,

and lowering the dignity of Diplomatic representatives. And such a course, by whomsoever adopted, we could only consider as politically suicidal. The nation which might adopt it would probably be the first to feel its effects.

Mr. Dudley Field, in Art. 136 of his *Code*, provides for the *jus transitus*, so far as may be necessary to enable the envoy to reach his post, and bases his text on the "general principle," acknowledged by France with the limitation inserted, and supporting the Article by a reference to Phillimore. He further requires, with Halleck, that if the passage be made through a country which is in a state of war, the envoy should obtain a passport or safe-conduct from its authorities. This seems to us, from the point of view of Civil Law, an unnecessary derogation from the general principle, though it may perhaps be a salutary precaution in case of meeting either of the hostile forces, who might be inclined to the practice of "Jeddart Justice," and hang or shoot an Ambassador first, and regretfully discover his character afterwards. But if Letters of Credence are worth anything, they ought to suffice, we should contend, to protect their bearer on his way to or from his Diplomatic residence, without need of passports or safe-conducts from the rulers of any country through which he may have to pass. We fancy that, as a matter of fact, Mr. Bathurst affords the latest known case of a Diplomatic Agent whose *transitus* has been made to include the passage of the Styx. He "disappeared," to use a delicate expression, at Perleberg, and the Emperor Napoleon I. enjoys the credit of having arranged for the "disappearance." We hardly can suppose that anybody seriously desires to see such a state of things become common.

It is not possible to consider, however cursorily, the field covered by the Law of Nations without devoting some attention to the attitude which Text-writers adopt in

regard to a State of War. For though the primary object of the leading Jurists on this point of Law has been, it may fairly be said, the inculcation of Peace, yet none but the wilfully blind can shut their eyes to the fact that war exists, and is likely to continue to exist, for a long time to come. Moreover, it has always appeared to us very important to maintain the contrary of the evil maxim "*Inter Arma Silent Leges.*" If the Law of Nations is to be of real help to humanity it must, while softening the rigour of war as much as possible, recognise its existence in order to control and mitigate it. We therefore recall with pleasure the publication by the Institute of International Law of a Manual of the Laws of War,* as well as the long and elaborate Treatise on Maritime Prize Law, published in the pages of the *Revue de Droit International* (Brussels), by M. Bulmerincq, a distinguished Russian member of the Institute.

The land and sea aspects of the Law of Nations in time of War have recently attracted the pens of several able Continental Jurists. We would specially name in this interesting and important branch the volumes put forth by M. de Boeck,† Advocate of the Court of Appeal, Paris, on Enemy Property under Enemy Flag; and by M. Fauchille, also an Advocate of the same Court, on Maritime Blockade.

From distant Sweden, too, there reaches us an interesting pamphlet closely connected with the subject-matter of the Brussels Conference on the Laws of War, and the Manual of the Institute, viz., Dr. Grenander's‡ Essay on the

* *Les Lois de la Guerre sur Terre.* Bruxelles: Librairie Muquardt. 1880.

† *De la Propriété Privée Ennemie sous Pavillon Ennemi.* Par C. De Boeck, Docteur en Droit, &c. Paris. G. Pedone Lauriel Successeur. 1882. *Du Blocus Maritime.* Par Paul Fauchille, Docteur en Droit, &c. Paris. 1882.

‡ *Sur les Conditions nécessaires, selon le Droit des Gens, pour avoir, en Guerre, le Droit d'être considéré et traité comme Soldat.* Par B. K. Grenander, Docteur en Droit. Extrait de la *Revue Pratique de Droit Français.* Paris. Librairie A. Marescq Aîné. 1882.

Necessary Conditions for being considered as a Soldier in time of War. These are all more or less thorny questions, the study of which, nevertheless, cannot be waved aside. The very elaborate treatise which we owe to the pen of M. de Boeck exhibits in a marked degree the tendency of a large, perhaps even dominant School of Thought among Continental Jurists on the question of Maritime Capture. It would, indeed, almost seem as though, broadly speaking, the case had resolved itself into *Britanni contra mundum*. At least such is the impression left upon us by the arguments marshalled in serried array by the learned author. M. de Boeck deals much throughout with English views and English cases. He recognises fully the weight which those views and those cases must carry in a question concerning the Law of the Sea. But he at the same time spares no opportunity for showing us how isolated we are in the views we hold, and he cites Bluntschli to warn us of the sad experience through which, perchance, we may come to a different frame of mind. It is possible that in time our views may change. We believe we are open to conviction. But we have certainly not as yet been convinced that there is not a false as well as a true humanitarianism. And we are not so sure as M. de Boeck would have us that all the modern doctrines constitute a real advance. We remember perfectly the action of the Maritime Congress at Naples in 1871, which, in common with Signor Pierantoni and other recent writers, he cites against us as demanding the Freedom of Private Property at Sea. We attribute greater weight to the similar demands made by the Institute of International Law at The Hague, in 1875; though we do not think that the Reports of the meetings indicate that an actual unanimity of opinion even yet prevails within that body. We still feel this difficulty as to the doctrine, in our own minds, that the so-called freedom of Private Property on land seems to be only true to a limited extent. We cannot

see that any Conventions have been passed between the Nations which prevent the invasion of our houses by the quartering upon them of enemy troops, or the destruction of those very houses, and of the timber, crops, &c., around them, if required, or alleged to be required, for strategic purposes. Is it, then, yet true to say that Private Property on land is free? Of course it is; as a rule, not so susceptible of being carried off as Private Property at sea, but it can be, and often is, destroyed. The whole question treated by M. De Boeck is one of great interest to English readers, and, whether agreeing with his general conclusions or not, we cannot but feel that he has brought to bear upon his subject not only the fervour of strong convictions, but also a wide acquaintance with English History, and a patient research into the Case Law of English and American Maritime Jurisprudence, such as are rare among foreign text-writers of the present day. From a broader and more theoretical point of view, the Laws of War afford the theme for a very opportune addition to the works which we have already had occasion to welcome from the able pen of M. Nys.* That a writer, who has already shown his familiarity with the Juridical attitude of the Mediæval Western Church, should in the course of his present work give fresh proofs of that familiarity, is only what might have been expected of him. Where Grotius seems to have been, perhaps simply through want of sympathy, less than just to mediæval writers, M. Nys does them ample justice. His judgment, indeed, as expressed at p. 72, that where the mediæval Jurists err in their treatment of the Laws of War, it is rather from excess of subtlety in their distinctions than from neglecting to treat them, seems to us a very true view. This subtlety, indeed, pervades

* *Le Droit de la Guerre et les Précurseurs de Grotius.* Par Ernest Nys, Docteur en Droit et en Sciences Politiques et Administratives. Bruxelles et Leipzig: Librairie Muquardt. 1882.

more or less the whole of mediæval Jurisprudence, over which it must not be forgotten what an 'inter-penetrating influence was exercised by the Canonists. No small number of the maxims which have come down to us familiar as household words from the Middle Ages may, we believe, be traced to a Canonical source. M. Nys, in his present very interesting Treatise, refers frequently to the maxims of Gratian and the doctrine of Aquinas, which last has a more than ordinary value in the light of the present Pope's exaltation of the Philosophy of the Angelic Doctor to the rank of the Philosophy of the Church. It is not, however, to any one side of its author's learning alone that the interest of the book is due, but rather to its many-sidedness. In his pages we meet not only with Gratian and the Angelical, with Bartolus and Accursius, but also with Froissart and the *Liber Feudorum*, with the Papal Ecclesiastical Jurists, De Victoria and Suarez, as with the Protestant Jurists, Gentili and Grotius, while among moderns we meet with such representative names in their several lines as Twiss and Schulte. The *History of the Laws of War*, from the pen of M. Nys, is full of interest for the Diplomatist and the Historian, as well as for the Jurist.

The importance attaching in International Law to the very difficult questions connected with Marriage makes us desirous not to conclude this brief *résumé* without mentioning the useful work done by the Jurisprudence Committee of the Social Science Association, on the subject of Foreign Marriage Laws, as related in the May number of the *Sessional Proceedings* (Office of the Association, and P. S. King), which we have before us. The gravity of the question is undeniable. It would, we should have thought, have afforded matter of sufficient importance for the forthcoming Nottingham meeting, the twenty-fifth Anniversary of the foundation of the Association. The evils arising from the present state of things are great, and not likely to cease.

It were much to be desired that French Jurists, whose country is the principal source of the difficulties, would seriously consider what are the true Juridical criteria of Marriage, and how far it is reconcilable with International Morality that the aid of Municipal Law should be invoked, and the almost *ultima ratio* of expulsion be threatened, if not actually employed, in the case of British subjects claiming in France rights arising under a marriage which would in all probability be sustained as valid in England. The very interesting American case of *Roth v. Ehmann*, which has gone up from the Superior Court of Cook County, Illinois, to the Superior Court of Illinois, and will, we should imagine, not stop till it has reached the highest point in American Appellate Jurisdiction, is another remarkable instance of the complex character of the problems constantly arising in the Law of Nations, in Peace, no less than in War,—from the Conflict of Laws in Peace, as well as from the many keenly controverted questions which belong to the *Droit de Guerre*.

VI.—SELECT CASES: SCOTTISH.

By HUGH BARCLAY, LL.D., Sheriff Substitute, Perth.

Malicious Mischief.

A party was convicted in a police court in having broken down a wooden paling, which had been recently erected across an access: *Held*, that "though the conduct of the accused was perhaps not commendable, he was in the circumstances justified in removing the barrier across his access, and that any question as to his right fell to be settled by a *civil* action rather than *criminally* in a police court." Conviction quashed with modified expenses. Justiciary. 29 October, 1879. *Black v. Laing*, 7 S.C., 1.

Tramways Act, 1879—Obstruction.

Held no wilful obstruction to warrant 'imposition of a penalty, and conviction quashed. Per Lord Young: "I think that the accused going up a hill at the *ordinary* pace of such vehicles and getting off the rails, immediately upon reaching the level are facts inconsistent with '*wilful obstruction*,' that is, in such a way as to inconvenience or endanger the car, and those within it, for that is the idea of '*wilful obstruction*' in the Statute." 29 October, 1879. *Hall & Mark v. Linton*, 7 S.C., 2.

General Police Act, 1862.

Held that a person exercising two horses on the *foreshore* was not liable to be convicted under the Act, the place not being a "*street*," as designed in the Act. 30 October, 1879. *Heatherton v. Watson*, 7 S.C., 9.

Public-House—Breach of Certificate.

Held that a publican was rightly convicted of having permitted women of notoriously bad fame to assemble and meet within his public-house. Per Lord Justice Clerk (Lord Moncreiff): "It is important to notice that the statute does not require *knowledge* of bad character on the part of the publican, nor does it impose on the prosecutor the duty of *proving* knowledge. What he must prove is *notoriety*. I think the statute very reasonably infers that if there is notoriety the keeper of a public-house is bound to know the character of the persons. In the second place, the notoriety must be notoriety in the place." 12 November, 1879. *Maxwell v. Malcolm*, 7 S.C., 4.

Poaching—Day Trespass Act.

Held that a son residing with his father, the tenant, and assisting in working the farm, was guilty of a trespass in the meaning of the Act by shooting *grouse* (the tenant having right to shoot *hares* and *rabbits* and to give leave to the family and servants to do so). Per Lord Moncreiff: "A tenant has been found not to be committing a trespass if in pursuit of game upon his farm without authority. That is not law in the case of a person in the position of a visitor, a brother-in-law, or a farm servant." 28 January, 1880. *James v. Earl of Fife*, 7 S.C., 9.

Poaching—Day Trespass Act.

Held, persons rightfully convicted who, remaining on the high road, sent their dogs into the neighbouring fields in pursuit of

game. Per Lord Moncreiff: "I think that a man who sends his dogs in this way, was just as guilty of a trespass as if he had gone himself. It is simply the case of using machinery or animals for the purpose of trespassing." 8 June, 1880. *Stoddart v. Stevenson*, 7 S.C., 9.

Wanton Cruelty—Act 13 & 14 Vict., c. 92.

A gentleman was walking accompanied with two small dogs, when a large dog attacked them. He endeavoured to separate the dogs, but finally struck the large dog with a knife by which it was killed: *Held* that he was not guilty of "*wanton cruelty*" under the Act, and conviction quashed. Per Lord Moncreiff: "I cannot call this '*wanton cruelty*.' He was entitled to protect his own dogs, and I cannot say that there was any intent to injure or inflict pain needlessly on his part." Per Lord Young: "I have great sympathy with the attachment that arises between men and dogs, but I confess that I think that dogs such as this one, are entirely out of place in cities, and people who keep them should consider that if everybody kept one, the place would be uninhabitable." 3 June, 1880. *Cornelius v. Grant*, 7 S.C., 13.

Wanton Cruelty—Statute 13 & 14 Vict., c. 92, s. 1.

A dog was trespassing in a field. A servant of the proprietor, within five yards of the dog, shot at it with small pellets. The dog recovered, but suffered severe pain. He was convicted by the justices, but conviction unanimously quashed. Per Lord Adam: "I am far from saying what the accused did was justifiable or proper in the circumstances. If he wished to scare the dog away he might have done so by throwing stones at it or in a like way. The question is if this was '*wanton cruelty*' in the sense of the Act. I do not think it was. The Act refers, I think, to the mode in which the thing was done. Now, to say that an act which caused pain to an animal does not necessarily mean that it was an act of '*wanton cruelty*.' Here there was nothing cruel in the way the thing was done. The only probable result was the immediate death of the dog. That only illustrates the nature of the act. If the dog had been killed it would have been difficult to see the '*wanton cruelty*.'" 28 October, 1880. *Jack v. Campbell*, 8 S.C., 1.

Day Trespass Act—Rabbits.

A tenant had power under his lease to snare *rabbits*. He employed a servant to do so. The servant found a *hare*

apparently dead in a trap. The hare recovered and ran away. He set his dog after it, recovered, and killed it: *Held* he was not liable for contravention of the Act (Lord Adam dissenting). Per Lord Young: "So far as the pursuit of rabbits, the servant was entitled to be on the field and see that the traps were in order, he did not enter the lands for an unlawful purpose, and did not commit any trespass by picking up or setting a dog at a wounded hare. This man was not a trespasser at all, he was not on the lands for an unlawful purpose." Per Lord Adam: "It appears to me that from the time he set on the dog he was as much in pursuit of game as he could possibly be. The case is the same as if he had a gun and had shot the hare." 29 October, 1880. *Laurie v. McArthur*, 8 S.C., 2.

Public House Acts—Breach of Certificate.

Held, circumstances not sufficient to support a conviction on a charge "of allowing men or women of notoriously bad fame to assemble or meet 'in a public-house,' it being necessary to prove that the assembling had reference to the bad character. Per Lord Young: "The assembling of such persons to the number of two or more together in a public-house for the mere purpose of refreshment, is not sufficient. The assembling must appear to have reference to the bad character referred to." (Several English cases were cited.) 30 October, 1830. *Kirton v. Cadenhead*, 8 S.C., 4.

Assault on Police Officers whilst in Discharge of their Duty— Prevention of Crimes Act, 29 & 30 Vict., c. 273.

Held that it was necessary to charge in the complaint the knowledge of the accused that the parties assaulted were police officers in discharge of their duty. Per Lord Young: "The prosecutor could prove no more than that the constables were engaged in discharge of their duty." "It was open for the accused to show by positive evidence, or that the probability from the whole facts and circumstances disclosed, was that although the persons to whom they offered and used violence were in truth police constables in the execution of their duty, they had no suspicion of that, and therefore they ought not to be visited by punishment as if they had known." 30 October, 1880. *O'Brien v. McPhee*, 8 S.C., 8.

Error in Date of Sentence and Warrant of Imprisonment.

A sentence and warrant thereon bore date 24th November, 1880, instead of 23rd the true date, but which was afterwards corrected. The sentence was quashed (Lord Craighill dissenting). "The record is the only authentic evidence of what was done, and if it be erroneous, there is nothing. There is nothing trustworthy upon which the warrant can be supported. I think it of the utmost importance that we should discountenance irregularity in the records of a Criminal, or indeed of any Court." Per Lord Justice Clerk Moncreiff: "It may be that the prisoner in this case has suffered no injustice by the error, but we are here dealing with criminal proceedings and a criminal sentence, where accuracy is absolutely essential." "It may be that the carelessness of an official has frustrated the object of justice, but I think that more good will be done by giving effect to the objection and not allowing slovenly proceedings in criminal cases than by repelling it." Per Lord Young dissenting: "The clerk's certificate is not the conviction or sentence, and it is to my mind a very startling proposition indeed, that an error in it is incurable and a ground for quashing a conviction." "An error in the extract or certificate of decree in civil cases, will not affect the decree as pronounced by the Court, and may be corrected on a new and proper extract or certificate given out." 3 February, 1881. *Riddell v. Stevenson*, 8 S.C., 17.

Police and Improvement (Scotland) Act, 1862.

A conviction quashed where parties had been charged "for wilfully causing an obstruction in the public footpath of a public street by means of congregating." Per Lord Young: "It was simply a case of two or three people meeting and stopping in the street. You cannot go along any street which has a narrow footpath without meeting with an obstruction by people standing talking to one another. If they do it wilfully and pertinaciously, if there is anything exceptional in the circumstance which imports a different character into the act, then that should be set forth." Per Lord Moncreiff dissenting: "If the obstruction caused by the congregating of persons is innocent and accidental then there could be no ground for a charge, but if the obstruction be wilful then I think there undoubtedly is. When a man so stands that he will not allow any one else to

pass him without jostling, he is to my mind, clearly within the clause." 19 March, 1881. *Wemyss v. Black*, 8 S.C., 25.

Day Trespass Act, 2 & 3 Wm. IV., c. 68.

Held, 1st. That a complaint under this Act is sufficient if subscribed by a duly authorised agent. 2nd. That the complainant might be represented by a law agent. 10 June, 1881. *Shaw Stewart v. Wilson*, 8 S.C., 33.

Summary Procedure (Scotland) Act, 1875—Notice of Appeal.

Held, 1st. Sufficient that notice of appeal was posted on the third day though not received until the fourth. 2nd. That a general conviction on an alternative charge is incompetent. 10 June, 1881. *Charleson v. Duffes*, 8 S.C., 34.

Food and Drugs Act, 1875 and 1879.

Held that a sale of an *inferior* though *pure* quality of cream at a low price was not an offence under the Act. Per Lord Young: "I am clearly of opinion that a delivery of the article which was sold at a penny per gill satisfies a demand for 'cream' there being no suggestion that the article was adulterated or unwholesome or not worth the money that was paid for it." 10 June, 1881. *Morton v. Green*, 8 S.C., 36.

Jurisdiction—Locus Delicti.

Held, that a domiciled Englishman resident in England who had been lawfully apprehended there and brought to Scotland, was subject to the jurisdiction of the Judiciary on a charge of sending letters from England to traders in Scotland, and fraudulently obtaining goods from them. Per Lord Justice General (Ingis): "I am of opinion that Edinburgh is the *locus delicti* just as much as if the accused had sent either an accomplice or an innocent agent to carry out his fraudulent scheme in Edinburgh." 17 June, 1881. *Her Majesty's Advocate v. Witherington*, 8 S.C., 41.

Burgh Franchise—Joint Proprietor—Constructive Residence.

A. was joint proprietor of a house in a Burgh, but was resident in London where he and his family resided. He occasionally visited the Burgh on business, and when there resided in the house and remained for periods varying from two days to a fortnight. He claimed as a voter in the Burgh. The Sheriff

rejected the claim. He appealed, but appeal was dismissed. Per Lord Ormidale: "The claimant only came to the house for the purposes of business, he had his residence elsewhere." 4 November, 1879. *Kennard v. Allan*, 7 S.C., 1.

County Franchise—Destruction by Fire of Subject of Qualification.

A voter claimed on a *studio* and garden. The subjects were valued at £20 in the valuation Roll. His claim was objected to, because the *studio* had been destroyed by fire but again restored. The Sheriff admitted the claim. An appeal was dismissed. Per Lord Ormidale: "Every man who has house property is subject to the risk of fire, but so long as he does not lose the title, especially, if as here, he at once restores the subject, he does not lose his right to a vote." 4 November, 1879. *Hunter v. Ballantine*, 7 S.C., 2.

County Franchise—Joint Tenants.

Two sons worked a farm with their father. A verbal agreement was made with the landlord that the sons should be jointly interested in the farm, and thereafter the receipts for rent were made out in their joint names. The sons claimed as joint tenants, the value being sufficient. The Sheriff refused to admit the claimants. On an appeal the Court admitted them. Per Lord Mure: "The sons are plainly liable for the rent, and in the absence of any other arrangement equality of interest is the rule." 4 November, 1879. *Crawford v. Johnston*, 7 S.C., 3.

County Franchise—Necessity of a New Claim.

A man was enrolled on a house. He sub-let a portion but became tenant of another part of the same tenement. An objection to his remaining on the Roll was stated and sustained by the Sheriff, and an appeal was dismissed. Per Lord Ormidale: "When any one changes his qualification he is bound to put in a claim on his new qualification." 5 November, 1879. *Allan v. Smith*, 7 S.C., 6.

County Franchise—Omission by Assessor.

Where subjects have been erroneously omitted by assessor: Held competent for the proprietor to prove *aliunde* the evidence and value of the subjects omitted. 5 November, 1879. *Morrison v. Anderson*, 7 S.C., 7.

County Franchise—True Value not Rent.

A voter appeared on the Roll as paying rent of £9 10s., but that he had erected at his own expense a building of the yearly value of £10. He had been assessed for burdens on £19 10s. *Held*, on objection, that he was entitled to remain on the Roll. 6 November, 1879. *Ferguson v. Kerr*, 7 S.C., 7.

County Franchise—Constructive Occupancy.

A man claimed as a voter as joint tenant with his mother in a house where his furniture remained, but for some months he resided in lodgings: *Held* (Lord Ormidale dissenting), that he was in personal occupancy of the house as joint tenant and so entitled to be placed on the Roll. 6 November, 1879. *Johnston v. Buchanan*, 7 S.C., 7.

County Franchise—Defeasibility.

Three partners of a chemical work *occupied* them and claimed as voters. One partner afterwards obtained a lease: *Held* (Lord Craighill dissenting) that the others had been tenants and occupants during the requisite period and admitted to the Roll. 6 November, 1879. *Donaldson v. Arrol*, 7 S.C., 8.

County Franchise—Date of Entry.

Held that the mere election of a minister of a congregation, does not, before induction, make him proprietor of the manse. 7 November, 1879. *Mitchell v. Halley*, 7 S.C., 11.

County Franchise—Absolute Disposition.

Held an absolute conveyance of property could not be contradicted by parole, to show that it was merely in security of a debt, though that was admitted on oath by the disponent. 7 November, 1879. *Sheets v. Stewart*, 7 S.C., 12.

County Franchise—Lease.

Parole evidence of a lease with occupancy sufficient to admit a joint tenant to the Roll. 7 November, 1879. *Sheets v. Allan*, 7 S.C., 15.

County Franchise—Entails—Propulsion of Fee.

A father, proprietor in entail, granted a life rent to his son on which he claimed to vote: *Held* he was entitled to be admitted. Per Lord Mure: "It is *jus tertii* for any one except an heir of entail to object to the granting of such a deed." 8 November, 1879. *Sheets v. Buchanan*, 7 S.C., 15.

County Franchise—Tenant of Shootings Unconnected with any House or Lodge.

A gentleman was tenant of shootings, but the lands and houses were let to agricultural tenants: *Held* (Lord Ormidale dissenting) that the value being sufficient he was entitled to a vote. Per Lord Mure, after lengthy observations, concluded by saying: "on the whole matter I am of opinion that as tenants of shootings are tenants of '*lands and heritages*' by the law of Scotland as laid down in the House of Lords, and in a series of decisions in this Court as well as under the provision of the Acts of Parliament to which I have referred, these claimants ought to be put on the Roll." Per Lord Ormidale, "A right of shooting is *not* the proprietorship of *land*, nor is it in any sense the tenancy of *land*, for the land is held for no other purpose than of firing guns over it." 12 November, 1879. *Paterson v. Johnston*, 7 S.C., 17.

County Franchise—Sheriff's Power to Correct Entry.

A proprietor stood on the Roll as *sole* proprietor. During the year he disposed to his sons portions, but reserving sufficient value to qualify himself. He returned himself to the assessor as joint proprietor, but the assessor did not notice the change: *Held* that the Sheriff was entitled to insert "*joint*" before the word "proprietor," under the 44th Section of the Act, 1861; and no new claim was necessary. 12 November, 1879. *Anderson v. Mercer*, 7 S.C., 28.

County Franchise—Full Age.

A claimant was not of full age when the assessor made up his list, but was so when the Sheriff made up the Roll. The Sheriff refused to put him on the Roll. On appeal: *Held* he was entitled to be admitted as in the words of the Statute he was "*of full age*," when the Sheriff came to consider his right. 12 November, 1879. *Campbell v. Richardson*, 7 S.C., 32.

County Franchise—Defective Notice.

A notice of objection to the assessor was not in the form of the schedule, having no dividing lines or headings. *Held good* (Lord Craighill dissenting). Per Lord Ormidale: "It is undoubted that there are some things wanting in the notice here, and it would have been more correct if they had been inserted. But we have all that is *essential* in substance. The objection is

merely a technical one; and the fault, such as it is, is covered by the 44th Section." Per Lord Craighill: "The provisions of the Act have not been carried out, as the objection is not in form of the schedule. I think that this being so, the objection should be dismissed. This defect might have been remedied had the 44th Section been taken advantage of—the Sheriff might have corrected the notice, but he did not so." 12 November, 1879. *Lamont v. Richardson*, 7 S.C., 32.

County Franchise—Member of a Building Society— Suspensive Conditions.

By a Deed of Association members became proprietors of a dwelling on payment of a sum in instalments within twenty-one years. After one-half of the price had been paid the allottee had right to demand from the Society a disposition to the house on granting a bond for the remaining half of the price: *Held* that a party who had a house allotted to him, but who had not paid the one-half of the price, was not entitled to be enrolled as a voter. 12 November, 1879. *Bell v. Donaldson*, 7 S.C., 34.

A similar case was decided same day (Lord Ormidale dissenting), where the party had paid one-half of the price, but had not obtained a disposition to the property. 12 November, 1879. *Alexander v. Donaldson*, 7 S.C., 36.

Burgh Franchise—Lodger.

Held that a person who was on the Roll as a lodger, but changed his lodging, required to make a new claim and have it advertised by the assessor, and that a verbal notice to the assessor was not sufficient. 13 November, 1879. *Adair v. McBride*, 7 S.C., 38.

Burgh Franchise—Manager.

A manager of a company with a free house was for nine years on the Roll as a voter. The company could dismiss him at one month's notice. On an objection that his tenure was defeasible: *Held* that he was entitled to remain on the Roll. Per Lord Ormidale: "This is a narrow case, but on various previous instances, the Court has disconnected the office held by the voter from the house." 13 November. *Stewart v. Adair*, 7 S.C., 39.

Burgh Franchise—Receipt of Parochial Relief.

A voter received parochial relief in August: *Held* that he was entitled to have his name retained on the Roll, as not

"being in receipt of parochial relief within the twelve calendar months next proceeding the last day of July, 1879." 13 November, 1879. *Davidson v. Cannon*, 7 S.C., 41.

Burgh Franchise—Separate Rating.

A man claimed as an occupier of a dwelling house, he having the occupation of one room. By an omission of the assessor he had not been entered in the valuation Roll; and, consequently, paid no poor rates: *Held* that he was not entitled to be admitted as a voter, as rating was necessary. 14 November, 1879. *Cannon v. McKeand*, 7 S.C., 41.

County Franchise—Trust Estate Beneficiary.

Beneficiaries on an estate held by trustees, claimed to be admitted to the Roll. The period of division had arrived: *Held* (Lord Ormidale dissenting), that the right of the beneficiaries was moveable not heritable; and, therefore, they were not entitled to be admitted. Per Lord Mure: "It appears to me that this estate must be held to have been converted into moveable property, and must be so dealt with." Per Lord Ormidale: "I think we must hold that the obligations on the trustees to sell be only peremptory until a certain time arrives; that is, until the purposes are fulfilled." 14 November, 1879. *Anderson v. Ovens*, 7 S.C., 42.

County Franchise—Failure to Appear—Effect of Sequestration.

Held, 1st, that a Sheriff is not bound to strike a voter's name off the Roll on his non-appearance on a single citation; 2nd, that a partner under sequestration loses his qualification in the company property (Lord Craighill dissenting); 3rd, that the appending names of voters where cases depend on the same question of law as only applicable to claimants, and appellants must each take a separate special case. 15 November, 1879. *McGowan v. Mather*, 7 S.C., 46.

SELECT CASES: COLONIAL.

CANADA—ONTARIO. COURT OF APPEAL (FROM C.P.), NOVEMBER 28, 1881. *Anchor Marine Insurance Co. v. Phoenix Insurance Co.*

Insurance—Freight—Loss.

The plaintiffs were insurers of a cargo of grain, and the defendants insurers of both hull and freight of the vessel, which

was owned by M. The vessel sank during the voyage and damaged the grain. The master refused to deliver it to the plaintiffs unless his freight were paid. The plaintiffs paid the freight and took an assignment of M.'s policy. Both the owner and plaintiffs thought it more prudent to take the cargo to Buffalo, as being more saleable than in Kingston, its original place of destination, which was accordingly done. The plaintiffs now sued on the defendants' policy as assignees of M.: *Held*, affirming the decision of the Court below (30 C.P., 570), that they were not entitled to recover, for their only rights were those of M., who had suffered no loss for which the defendants were liable, inasmuch as he had been paid his freight.—*Canadian Law Times*, Occasional Notes, December, 1881.

ONTARIO.—COURT OF APPEAL (*ut supra*). *Peak v. Shields*.

Insolvent Act, 1864, sec. 8, sub-sec. 7—Insolvent Act, 1875, sec. 136 [Quære, Ultra Vires]—Fraud in Obtaining Credit—Contract made Abroad—Jurisdiction of Parliament of Canada.

The plaintiffs sued for goods sold and delivered to the defendants, who were insolvents, and, under sec. 136 of Insolvent Act, 1875, charged fraud in the defendants in procuring the goods on credit, knowing themselves to be unable to meet their engagements, and concealing the fact from the plaintiffs. The defendants were domiciled in Ontario, and the contract was made in England: *Held*, affirming the judgment of the Court below (31 C.P., 112), that the act charged was not a crime, nor were the proceedings criminal, but that the Statute gave an additional remedy for the recovery of the debt; and it made no difference, therefore, that the contract was made in England.

Per Spragge, C. J. O. (Morrison, J. A., concurring): Sec. 136 of the Insolvent Act, 1875, dealing with the matter of procedure incident to the law of Bankruptcy and Insolvency, was within the jurisdiction of the Parliament of the Dominion of Canada to enact.

Per Burton, J. A.: This section, which gives certain creditors a remedy for the recovery of their debts in full, is contrary to the policy of Insolvency laws, which aim at a rateable distribution of the assets among all the creditors of the insolvent, and does not properly come under the head of Bankruptcy and Insolvency, and is, therefore, *ultra vires* of the Parliament of

Canada. But sec. 8, sub-sec. 7 of Insolvent Act, 1864, to the same effect, is still in force, the Parliament of Canada having no power to repeal it.

Per Patterson, J. A.: The plaintiff is entitled to recover, whether sec. 136 of Insolvent Act, 1875, is *ultra vires* or not; for the Parliament of the Dominion of Canada either had power to deal with the subject of this section, in which case it would be binding; or it had not power to do so, in which case the same enactment in the Insolvent Act, 1864, is unrepealed and in force.—*Canada Law Journal*, December 15, 1881.

SUPREME COURT OF CANADA.—ON APPEAL FROM SUPREME COURT OF NOVA SCOTIA, MARCH 28, 1882. *Guildford v. Anglo-French S.S. Co.*

Master of Ship — Dismissal of—Damages — Misdirection — New Trial.

This was an appeal from a judgment of the Supreme Court of Nova Scotia, making absolute a rule *nisi* to set aside a verdict of 2,000 dollars for appellant (1 C. L. T., 554).

This case, which we printed in our Select Cases (Colonial), *Law Magazine and Review*, No. CCXLII., for November, 1881, where the facts are set out, was tried without a jury before W. Young, Chief Justice of Nova Scotia, who gave judgment in favour of the appellant for 2,000 dollars, and in estimating damages the learned Judge considered the appellant to be a part owner in the steamer, and not a master in the ordinary sense.

The verdict was set aside by the Supreme Court of Nova Scotia. On appeal to the Supreme Court of Canada it was *Held* that appellant, although a shareholder, had no title whatever to any share of the ship, and that damages were allowed upon an erroneous principle; that a new trial was properly ordered, in order to determine whether, irrespective of the appellant being a shareholder, the causes for dismissal relied upon and the evidence given thereof were sufficient to justify dismissal without notice. Appeal dismissed with costs.—From Occasional Notes, 2 *Canadian Law Times*, 250, for May, 1882.

Legal Obituary of the Quarter.

(ENGLAND, SCOTLAND, AND IRELAND.)

ASTON, John Partington, Esq., Solicitor, Manchester, aged 76. Admitted in 1828. Mr. Aston was intimately connected with the Owens College, Manchester, as Secretary and Solicitor to the Trustees. *May 11.*

BARRINGTON, Hon. Henry Frederick Francis Adair, M.A., of Lincoln's Inn, Barrister-at-Law, aged 73. Mr. Barrington, who was called to the Bar in 1835, was of Christ Church, Oxford (B.A., 1830), and was youngest son of George, 5th Viscount Barrington of Ardglass, in the Peerage of Ireland (cr. 1720). He was for some time President of the Criminal Court, British Caffraria, and died at the Cape of Good Hope. The first Viscount's third son, Daines Barrington, K.C., was Second Justice of Chester. *March 25.*

BAYLIS, Alexander John, Esq., J.P., Solicitor. Admitted in 1833. Mr. Baylis was J.P. for Surrey, and on the Commission of Lieutenancy for the City of London. *May 16.*

BOURKE, Walter Mathew Patrick, M.A., of Curraghleagh, Co. Mayo, and Rahassane, Co. Galway, and of the King's Inns, Esq., Barrister-at-Law, aged 43. Mr. Bourke, who was J.P. for Co. Mayo, was eldest surviving son of the late Isidore Bourke, Esq., of Curraghleagh, Crown Solicitor for Co. Mayo. He was educated at Stonyhurst, and afterwards graduated at Trinity College, Dublin (B.A., Senior Moderator, 1859), and was called to the Irish Bar in 1858. He subsequently practised at the Bar of the Supreme Court, Fort William, and on his return from Calcutta purchased the estate of Rahassane Park. He was shot near Gort, after having been, in the first instance, a most popular landlord. The Bourkes of Curraghleagh, formerly of Tyrawley and Carrowkeel, as descendants of Sir Edmund Albanagh de Burgo, ancestor of the Mayo Bourkes, and of the Earls of Mayo, and Viscounts Mayo, held, under the law of Tanistry, the elective title of MacWilliam Bourke. *June 8.*

BROOK, William Richard, Esq., Solicitor, aged 37. Admitted in 1868. *July 9.*

BROUN, Sir William, of Colstoun, 9th Baronet, Member of the Faculty of Procurators of Dumfriesshire, aged 77. Admitted in 1829. Sir William succeeded, in 1858, his brother, Sir Richard Broun, who claimed to be heir male of the Brouns of Colstoun, created baronets in 1686, and, as such, heir to the Baronetcy, which he assumed. *June 10.*

CARLYON, Clement Carpenter, Esq., Solicitor, Truro, Deputy Coroner for Central Cornwall, aged 32. Mr. Carlyon, who was admitted in 1871, was eldest son of Edward Trewbody Carlyon, Esq., of Trevre, Cornwall, and grandson of Clement Carlyon, Esq., M.D., of Truro, by Eliza, daughter of Thomas Carlyon, Esq., of Tregrehan, High Sheriff of Cornwall, 1802. *June 16.*

CARR, William James, Esq., Solicitor, Colne, aged 58. Admitted in 1847. *May 24.*

CHAMBERS, Henry Croft, Esq., Solicitor, Market Rasen. Admitted in 1866. *July 10.*

CLIFFORD, William, of Magna Charta Island, Bucks, and of the Middle Temple, Esq., Barrister-at-Law, aged 74. Mr. Clifford was called to the Bar in 1839. *June 8.*

COBBE, Thomas, of Easton Lys, and of the Inner Temple, Esq., Barrister-at-Law, aged 68. Mr. Cobbe, who was called to the Bar in 1841, was the author of "A History of the Norman Kings of England." He was a son of the late Charles Cobbe, Esq., High Sheriff of Co. Dublin in 1821, and brother of the well-known writer, Miss Frances Power Cobbe. *May 13.*

CROOME, James, M.A., of the Inner Temple and South-Eastern Circuit, Esq., Barrister-at-Law. Mr. Croome, who was called to the Bar in 1857, was of Brasenose College, Oxford (B.A., 1849). *June 23.*

DARBY, John Nelson, M.A., formerly of the King's Inns, Barrister-at-Law, aged 79. Mr. Darby, who was educated at Westminster, and Trinity College, Dublin (B.A., and Gold Medallist, 1819), was called to the Irish Bar in 1825, but subsequently took Orders. *April 29.*

DOWLING, William P., Esq., Solicitor (Irel.), Admitted in 1843. *June 12.*

DUGDALE, William Stratford, of Merevale Hall, Warwickshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 54. Mr. Dugdale who was called to the Bar in 1858, was eldest son of William Stratford Dugdale, Esq., of Merevale, M.P., for North Warwickshire, and heir of line of the Stratfords of

Merevale, and of Sir William Dugdale, Garter King of Arms.
May 9.

DUNN, Edward Julyan, of the Middle Temple, Esq., Barrister-at-Law, aged 37. Mr. Dunn, who was a member of the South Wales Circuit, was called to the Bar in 1868. *May 17.*

EDWARDS, Samuel, Esq., Solicitor, of Sawtry Lodge, Lewisham, aged 60. Admitted in 1850. *May 14.*

FOSTER, Thomas Campbell, Esq., Q.C., and a Bencher of the Middle Temple, aged 68. Mr. Foster, who was called to the Bar in 1846, was Revising Barrister for the West Riding, 1868-75, when he took silk and became a Master of the Bench, having been appointed Recorder of Warwick in 1874. *July 1.*

FITZGERALD, Charles, Esq., Solicitor (Irel.), aged 60. Admitted in 1861. Mr. Fitzgerald was the last survivor of a firm established before 1798. *June 3.*

FRANKLYN, William Norris, Esq., Solicitor, formerly Clerk to the Magistrates at Barnet, aged 80. *April 6.*

GERRARD, Samuel, Esq., Solicitor (Irel.), aged 68. Admitted in 1843. *April 22.*

GOLDSMITH, John, Esq., Solicitor, aged 58. Admitted in 1858. *July 13.*

GRUNDY, Thomas, Esq., Solicitor, Manchester, Clerk to the Magistrates for Cheshire, aged 45. Admitted in 1860. *June 20.*

GUNNING, George Robert, Esq., Solicitor (Irel.), aged 66. Admitted in 1840. *April 23.*

HANCOCK, George, Esq., Solicitor. Admitted in 1843. *May 28.*

HARPER, Charles, Esq., Solicitor, Hadleigh, Suffolk, aged 53. Admitted in 1850. *July 4.*

HOLKER, Right Hon. Sir John, P.C., late a Lord Justice of Appeal, aged 54. Sir John, who was son of a manufacturer at Bury, Lancashire, was educated at the Bury Grammar School, and was originally under articles with a Solicitor. Entering at Gray's Inn, however, he was called to the Bar of that Honourable Society in 1854, and first practised at the Bar in Manchester. In 1868 he became Q.C., and one of the leaders of the Northern Circuit. In 1872 he entered Parliament as M.P. (Conservative) for Preston. In 1874 he was made Solicitor-General, and in 1875 Attorney-General, under the late Lord Beaconsfield's administration. His elevation to the Court of Appeal was a recognition of merit from the administration of Mr. Gladstone, who is stated by Lord Coleridge to have

considered the late Lord Justice as one of the very closest and most fearless of legal reasoners he had ever listened to. In the course of the able tribute to the memory of Sir John Holker (recorded in the pages of the *Law Journal*), from which we have cited Mr. Gladstone's testimony, Lord Coleridge said that, looking back over his recollections, he could not "call to mind another instance of professional success at once so rapid and so enduring," and that "no success spoilt him—no elevation puffed him up." And, alluding to the short time the Lord Justice had spent upon the Bench, Lord Coleridge remarked—"What he would have been ultimately as a judge it is not possible for any one of us to say,—in that regard he must remain one of those 'heroes of unfulfilled renown,' of whom there are so many in life, and whose fate must fall on any thoughtful man who looks on the destinies of his race, if perhaps with hope, certainly with grave sadness." And the Attorney-General, on behalf of the Bar, dwelt earnestly upon the example which Sir John Holker set to every advocate; "for, while zealous for his clients, he was always just towards his opponents—

' His armour was his honest thought,
And simple truth his utmost skill.' "

May 24.

INGLEDEW, Henry, Esq., Solicitor, Newcastle-on-Tyne, aged 96. Admitted in 1817. *May 24.*

IVORY, Thomas, Esq., M.A., of Lincoln's Inn, Barrister-at-Law, and Advocate at the Scottish Bar, aged 61. Mr. Ivory, who was son of the late Lord Ivory of the Court of Session, was Snell Exhibitioner from the University of Glasgow at Balliol College, Oxford (B.A., 2nd Class, *Lit. Hum.*, 1842). He was called to the English Bar in 1845, and to the Scottish Bar in 1850, and was Counsel for the Scotch Department of the Commissioners of Woods and Forests. *May 6.*

JONES, Augustus Thomas, Esq., Solicitor (Irel.), of Rushin House, Co. Fermanagh. Admitted in 1840. *May 30.*

JONES, William Bence, M.A., of Lisselan, and of the Inner Temple, Esq., Barrister-at-Law, aged 69. Mr. Bence Jones, who was called to the Bar in 1837, was educated at Harrow, and was of Balliol College, Oxford (B.A., 1834). He was eldest son of the late Lieutenant-Colonel Jones, of Lisselan, Co. Cork, by the daughter of Rev. Bence Bence, of Thorington Hall, Suffolk. *June 22.*

KEMPLAY, James, Esq., M.A., Q.C., and a Benchet of the Middle Temple, aged 71. Mr. Kemplay, who was of Trinity College, Cambridge (B.A., 3rd Wrangler, 1833), was called to the Bar in 1832. He took silk in 1872, and became a Master of the Bench of his Inn in 1874. *June 4.*

LIEBSTEIN, Hermann, of Gray's Inn, Esq., Barrister-at-Law, aged 53. Called in 1858. *July 13.*

MACDONALD, Robert, Esq., S.S.C. (Scot.), aged 39. Admitted in 1870. *April 28.*

MACDONOGH, Francis, Esq., M.A., Q.C. (Irel.), of Ballyquin, Co. Kilkenny, J.P. for Armagh, Sligo, and Kilkenny, aged 77. Mr. Macdonogh, who was of Trinity College, Dublin (B.A., 1825, M.A., 1865), was called to the Irish Bar in 1829, took silk in 1842, and was from 1860 to 1865 M.P. for Sligo. *April 11.*

MINSHALL, Charles, Esq., Solicitor, Oswestry, aged 57. Admitted in 1849. *May 20.*

MOORE, James Hamilton, Esq., Solicitor (Irel.), aged 62. Eldest surviving son of Hugh Moore, Esq., of Dromont, Co. Tyrone. Admitted in 1840. *May 22.*

MURE, James, Esq., Advocate at the Scottish Bar, H.B.M. Consul for the Balearic Islands, aged 46. Mr. Mure, who was called by the Faculty of Advocates in 1857, was youngest son of Col. William Mure of Caldwell, Vice-Lieutenant of Renfrewshire, and nephew of David Mure, Lord Mure of the Court of Session. The Mures of Caldwell descend from Sir Reginald More, or Mure, of Abercorn, Chamberlain of Scotland, *t. Dav. II.* *May 8.*

NEWMARCH, John, B.A., of the Comer Estate, Ceylon, of the Inner Temple, Esq., Barrister-at-Law, aged 66. Mr. Newmarch, who was called to the Bar in 1857, was of Trinity College, Cambridge (8th Wrangler, 1839, B.A., 1840), and was also a Fellow of the University of Calcutta. He was eldest son of the late Rev. J. L. Newmarch, Vicar of Hooton Pagnell. *June 14.*

O'HEA, James, of Greenfield, Co. Cork, and of the King's Inns, Esq., Barrister-at-Law, aged 72. Mr. O'Hea, who was third son of John O'Hea, Esq., of Greenfield, passed a brilliant career as Scholar and Prizeman of Trinity College, Dublin (Scholar, 1829, B.A., 1831), and Gold Medallist of the Historical Society. He was called to the Irish Bar in 1838, when he joined the Munster Circuit, and was of Counsel for the

Traversers in the State Trials, 1844. He was subsequently Crown Prosecutor for Cos. Cork and Limerick. He was a close personal friend of Daniel O'Connell, and a fellow-worker with him in the agitation for "Repeal." *May 27.*

O'MEAGHER, Joseph, Esq., Solicitor (Irel.), formerly of Beaumont, Tullow, Co. Clare, aged 80. Mr. O'Meagher, who was formerly a Solicitor, but had retired from practice, was a descendant of the O'Meaghers of Clonyne Castle, Roscrea, who were dispossessed by Cromwell in 1653. *May 20.*

PERRY, Right Hon. Sir Thomas Erskine, formerly Chief Justice of Bombay, aged 75. Sir Thomas, who was called to the Bar of the Inner Temple in 1834, was son of James Perry, Esq., proprietor of the *Morning Chronicle*. He was appointed a Judge of the Supreme Court, Bombay, in 1840, when he was knighted, and in 1847, Chief Justice, which office he held till 1852. He was M.P. for Devonport, 1854-9, and was a member of the Council for India, 1859-74. *April 22.*

POGMORE, Frank Herbert, Esq., Solicitor, Atherstone, aged 27. Admitted in 1877. Son of the late John Pogmore, Esq., of Atherstone. *May 15.*

PRICE, Charles Godfrey, M.A., of The Groves, Erbistock, Flintshire, and of the Inner Temple, Esq., Barrister-at-Law, aged 61. Mr. Price, who was called to the Bar in 1854, was M.A. of Jesus College, Oxford (B.A. 1842, 2nd Class, *Lit. Hum.*). *June 11.*

PULLEY, William, of Lincoln's Inn, Esq., Barrister-at-Law, aged 55. Called in 1852. *June 18.*

RICE, James, LL.B., of Lincoln's Inn, Esq., Barrister-at-Law, aged 35. Mr. Rice, who was of Queens' College, Cambridge (LL.B., 1868), was called to the Bar in 1871. He was formerly Editor of *Once a Week*. *April 27.*

ROCHE, Eugenius Stewart, of Lincoln's Inn, Esq., Barrister-at-Law, aged 59. Called in 1857. *May 13.*

SEMPER, Hon. Hugh Reilly, Chief Justice of Gibraltar, aged 50. The Chief Justice, who was son of the late Hugh Reilly Semper, Esq., of St. Kitts, West Indies, was called to the Bar by the Honourable Society of the Middle Temple in 1866. He was formerly a member of the Legislative Assembly of St. Kitts, and of the Executive Council of Montserrat, and afterwards Law Officer of the Crown at Tortola (1868), Attorney-General of St. Kitts (1870), of the Leeward Islands (1872), and Barbadoes (1874). In 1878 he was appointed a

Judge of the High Court, Demerara, and had been transferred to Gibraltar only since the beginning of the present year.
June 18.

SHEEHAN, John, M.A., of the Inner Temple, Esq., Barrister-at-Law, aged 68: Mr. Sheehan, who was called in 1846, was a member both of Trinity College, Dublin, and of Trinity College, Cambridge. He had in early life been much associated in writing with our late valued contributor, Sir Edward Creasy, a friend of Cambridge days. *May 29.*

SMITH, George Beverley, Esq., Solicitor, Salisbury, aged 27. Mr. Smith, who was admitted in 1878, was eldest son of George Smith, Esq., Solicitor, of Salisbury. *June 22.*

SMITH, Sir Philip Protheroe, Kt., of Tremorvah, Cornwall, Solicitor, aged 71. Sir Philip, who was younger son of Thomas Smith, Esq., Town Clerk of Bideford, and brother of Sir Montague Smith, was admitted in 1832. He received the honour of knighthood as Mayor of Truro, on the occasion of the visit of the Prince of Wales in 1880. *June 24.*

STOCK, Thomas, Esq., Solicitor, aged 62. Admitted in 1870. *May 17.*

STONHOUSE, Reginald Charles Dowdeswell, of the Inner Temple, Esq., Barrister-at-Law, aged 28. Mr. Stonhouse, who was educated at Cheltenham College, was called to the Bar in 1875, and became a member of the Midland Circuit. He was eldest surviving son of the present Sir Henry Vansittart Stonhouse, Bart., of Radley (Cr. 1628 and 1670). *May 6.*

STRETTON, Charles Marston, Esq., Solicitor, aged 71. Admitted in 1843. *June 4.*

TEMPEST, Charles, Esq., Solicitor, formerly of Leeds, aged 62. Admitted in 1842. *July 15.*

TERRY, Benjamin, Esq., Solicitor, Bradford. Admitted in 1843. *May 27.*

VANSITTART, Augustus Arthur, M.A., of Lincoln's Inn, Esq., Barrister-at-Law, aged 57. Mr. Vansittart, who was younger son of the late General Vansittart, of Bisham Abbey, was M.A. of Trinity College, Cambridge (B.A., Senior Optime, First Class Classical Tripos, Junior Chancellor's Medallist, 1847, and Fellow, 1848), was called to the Bar in 1852. *April 17.*

WAILES, Francis, J.P., of Beacon Banks, Easingwold, Yorkshire, and of Gray's Inn, Esq., Barrister-at-Law, aged 73. Mr. Wailes, who was called to the Bar in 1833, was third son of George Wailes, Esq., Q.C., Benchet of Gray's Inn, and of

Potter Newton Hall, Leeds. He was J.P. for the North. Riding of Yorkshire. *April 13.*

WALKER, Thomas, Esq., of Rosemount, Papcastle, formerly a Solicitor in Cockermouth, aged 62. Mr. Walker, who was eldest son of the late George Walker, Esq., of Aughton, Lancashire, was admitted in 1844. *April 25.*

WOODARD, Edward, Esq., Solicitor, Billericay, aged 68. Admitted in 1842. *May 15.*

WYNNE, Brownlow Wynne, of Garthewin, Denbighshire, and of the Middle Temple, Esq., Barrister-at-Law, aged 67. Mr. Wynne, who was son of the late George Cumming, Esq., M.D., was educated at Rugby, and called to the Bar in 1841. He soon afterwards assumed the name of Wynne, in lieu of his patronymic Cumming, on succeeding to the Garthewin Estate. *May 1.*

Reviews of New Books.

Henrici de Bracton De Legibus et Consuetudinibus Angliæ Libri Quinque. Edited, under the direction of the Master of the Rolls, by SIR TRAVERS TWISS, Q.C., D.C.L. Vol. V. Longman and Co. 1882.

In the interesting volume now before us, Sir Travers, it will be seen, is drawing near the close of the important work confided to him by the Master of the Rolls. And the nearer we get to the end, the more we feel how much has yet to be said, which the restrictions of the regulations imposed upon Editors who work for this valuable series of National Monuments will necessarily preclude the learned Editor from saying. As far as possible, however, Sir Travers Twiss does take advantage of the opportunity, slight though it be, of noticing points connected with his edition in the Preface to the several volumes. In his present issue, as might have been expected, he explains, at greater detail than heretofore, his reasons for adopting "Viscount" instead of "Sheriff" as his editorial rendering of "Vice-Comes." The weight of some of the arguments thus advanced we do not dispute. The larger sphere of the Anglo-Norman "Vice-Comes," as compared with that of the Anglo-Saxon

"Shire-Reeve," we can easily admit, and we may agree with the suggestion that "King's Reeve" would better set forth the position of the Anglo-Norman officer. But the general identity of the office which he held, and the substantial continuity of its history, coupled with the absence, so far as is known to us, of any other *vernacular* name than "Sheriff," would have sufficed to content us with the old name, if Sir Travers had retained it. Failing that, we should rather have preferred the use of the Latin name, as in the text. The family to which "Gerefa" belongs is a widespread one, and its members have had in their day a very chequered history. The "Dyke-grave" of the Netherlands is a very rational official for a country which is, if anything, below the sea-level; but he is a very humble person by the side of his distant cousins, the Burgrave and the Margrave, whom Imperial Houses reckon among their progenitors. And there is a curious parallelism in the vicissitudes of the *Comes*, the Latin namesake of the "Gerefa," who comes before us in the varying dignity of the Celtic *Maormor*, and the Scandinavian *Jarl*, both of them so high in rank as to be scarcely distinguishable from the King, and the Norman Count, originally no less exalted a person, as we may remember by the case of Roger, the great Count of Sicily and Apulia; while if we carry this great line far enough down we reach the Constable—blue-coated and truncheoned nineteenth century representative—*quantum mutatus!*—of the *Comes Stabuli* of Emperors and Kings. Can we wonder that Popes are reminded by the extinction of the torch at their Coronation—" *Sic transit gloria mundi?* "

Concerning *Essoins*, the view taken of the history of the word by Sir Travers Twiss seems partly in accordance with Littré, who, however, would appear to trace it through "Bas-lat," to a Saxon root, "Sunnen"—"empêchement, excuse," and compares "soin," which he says contains the same root. But the "Ex" found in "Exoigne," the form under which Littré gives the word, he traces to a meaning exactly the opposite of Spelman's, justly doubted by Sir Travers. It is intensive, not privative. It may be doubted how far Littré's "Aneien Saxon" is to be taken literally as meaning the dialect of Old Saxony; we suspect it bears a somewhat more elastic attribution, and might cover a reference to Gothic or Frankish. Dietz, in his *Romance Dictionary*, prints "essoigne," and give "sogna" as its equivalent.

The two senses, obstacle, which Sir Travers considers

primary, and excuse, seem to blend very naturally. We can trace the sense of obstacle, it appears to us, in the *Laws and Usages of the City of Dublin*, printed in the *Historic and Municipal Documents, Ireland, 1172-1320*, edited for the Master of the Rolls by J. T. Gilbert, F.S.A., where we find it said, p. 268, "E sil respount apres la vewe, ou gette nule essoigne auant ceo quil die quil ne tient point mes sun filz ou sa fille, il respondera."

Mr. Melville M. Bigelow, in his *History of Procedure in England, Norman Period* (London, 1880), gives a very long list of examples of Essoins culled from cases as recorded in *Rot. Cur.* They present as a rule a strong family likeness to each other, though one in *Rot. Cur.*, 108, the Essoin "*de malo de ultra mare*" reads a little like a touch of Nature, only we know it simply meant that Hamo, son of H., was in the King's service beyond sea. But Hamo was nevertheless summoned to be at Westminster on the morrow of St. Andrew. Again, we see in *Rot. Cur.*, 95, how the Essoin "*de malo lecti*" was treated, four knights being sent to ascertain the facts of the case, and if no "*languor*" was proved, then Henry de P. was to be at Westminster in a month's time. The law did not demand impossibilities, but it took care to know as far as possible that the obstacles stated were real, and that the excuses offered were valid, the requirements of both senses of the word being thus satisfied.

In laying down the fifth instalment of Bracton's Treatise, we are glad to know that we have not yet taken leave of Sir Travers Twiss, but may look forward, ere long, to yet another, the concluding volume. What we feel most is the little that we can do to draw attention to the many points of interest in the valuable work of one, who was himself a "*Lucerna Furis*" in an age which, abroad and at home, was an age of distinguished Jurists.

Wilson's Supreme Court of Judicature Acts (1873-9 and 1881), *Appellate Jurisdiction Act*, 1876, *Rules of Court, and Forms*. Third edition. By M: D. CHALMERS, of the Inner Temple, Barrister-at-Law, assisted by HERBERT LUSH-WILSON, of the Inner Temple, Barrister-at-Law. Stevens and Sons. 1882.

This well-known book, which has been from the first a general favourite in the profession, comes out afresh in this, its third edition, under excellent auspices. Mr. Chalmers, whose valuable work on *Bills of Exchange* has been noticed by us in these

pages, and Mr. Lush-Wilson, to whose pen we have ourselves been indebted for contributions, have devoted themselves with zeal to the task set before them. The result cannot but enhance the already widely acknowledged value of Wilson's *Judicature Acts*. The Table of Cases runs, we observe, to over fifty pages. And yet, although necessary additions have been made in several important particulars, *e.g.*, the printing of the Acts of 1879 and 1881, the Winter and Spring Assizes Acts, &c., the book has skilfully been kept within a most moderate compass, so that Wilson's *Judicature Acts* remains, what it always was, one of the most handy, as well as one of the best appreciated, editions of the Acts.

The Law of the Office and Duties of the Sheriff. By CAMERON CHURCHILL, B.A., of the Inner Temple, Barrister-at-Law. Second Edition. Stevens and Sons. 1882.

We are glad to see that Mr. Churchill's labours have been duly appreciated by a demand for a revised re-issue of his book, which we noticed favourably on its first appearance. The historical portion of the author's work is not the least useful from the point of view of the growth and development of the position and duties of the Anglo-Saxon *Shire-Reeve* and the Anglo-Norman *Vice-Comes*.

In the present edition Mr. Churchill has somewhat altered his arrangement, adopting the theory of groups of chapters, rather than that of subdivision. This seems, on the whole, as convenient an arrangement as could be devised for a work dealing with a subject that naturally falls into groups. The reader can thus turn at once to the sections embracing the Sheriff's Judicial, Ministerial, and other classes of duties, according to his requirements at the moment. The addition of a chapter on Bills of Sale certainly constitutes an improvement, and the book, as a whole, maintains its original high character.

Curiosities of Law and Lawyers. By CROAKE JAMES. Sampson Low and Co. 1882.

This is a collection of *Ana.* concerning the Legal Profession, gathered, apparently in the course of his miscellaneous reading of leisure moments, extending over the half century of the compiler's active practice.

The stories come from very varied sources, and are, perhaps,

not all of equal authority. It seems to us, though the circumstance may be an 'accidental one, that Croake James,—whose name, by the way, reminds us very strongly of *Cro. Jac.*,—does not love the Bench of the Court of Session so much as the others with which he deals. At least, the brief characteristic touches introducing a story of a Scottish Judge often seems to fall curiously into the vein of describing him as coarse, or rude, or overbearing. Still it is fair to remark that some distinguished English legal luminaries do not come out much better.

The American stories might be multiplied almost indefinitely by a study of the "Legal Facetiæ," or "Humors of the Law," to which several of our American contemporaries regularly devote part of their column. We have often thought that the sense of humour must be much more strongly developed among Legal Practitioners beyond the Atlantic than it is among ourselves, and unquestionably the stories they have to tell are in many cases among the best in Legal *Anna*.

In a future issue, the titles of the several anecdotes might with advantage be revised, for they do not always accurately give the key to the subject-matter of the story itself. Sometimes the titles are too vague, as on p. 53, "Old Judge called Chief Justiciar." Sometimes, as on p. 327, "Justices of the Peace peculiar to England;" they are unintentionally misleading, it being simply a fact that there were Justices of the Peace both in Scotland and in Ireland before the Union of the three Kingdoms, and Lord Campbell's own words being "peculiar to the British Isles," obviously a very different statement. While treating of Chancellors, Croake James might have brought out the singular fact (mentioned by Mr. Seton in his recent *Memoir of Chancellor Seton*) of the reappointment of the last Chancellor of Scotland, the Earl of Seafield,—who, perhaps half in jest and half in real regret, said, "There's the end o' an auld sang," as he touched the Act of Union with the Scottish sceptre,—to be "Chancellor of that part of Great Britain called Scotland," an office which we believe he continued to hold till his death. As an amusing companion for a vacation ramble, the "Repertory of good things" concerning Law and Lawyers, provided by Croake James, may well find a place among the light literature of the Profession.

A Summary of the Law and Practice in Admiralty, with an Appendix of Admiralty Forms, Forms of Bottomry and Respon-

dentia Bonds, &c. By T. EUSTACE SMITH, of the Inner Temple, Barrister-at-Law. Second Edition. Steven and Haynes. 1882.

Seldom does a law book come out in so dainty a guise as to cover and type as this second edition of Mr. Eustace Smith's *Admiralty Law*. The author, who is also favourably known by his *résumés* of other important branches of the law, has brought together much useful new matter in the re-issue of the work before us, while yet he has kept the whole within a very moderate compass. The list of Admiralty Statutes, and the Epitome of the Merchant Shipping Acts, will lead up to the ready discovery of matter which it would have been too much to expect to find inserted in full. In giving the Rules and Practice, Mr. Eustace Smith has kept in view the jurisdiction of County Courts in Admiralty Cases, as well as that of the High Court. The names of Cases in the Table still give rise to grave suspicions of their wholesale slaughter in the various Reports. We know an Earl of Eglinton, in the Peerage of Scotland, but not an "*Earl of Eglington*" as in Swa. 8 (*op. cit.*, p. 95), and we are strongly impressed with the belief that Kingairloch in Appin is the true reading of "*The Kingaloch*" in 1 Spk. 263 (*op. cit.*, p. 105).

Digest of the Indian Jurist, containing the substance of all the Decisions of the Indian and English Courts, published in Vols. IV. and V. for 1880-81. By EDMUND FULLER GRIFFIN, of Lincoln's Inn, Barrister-at-Law. (Madras: Indian Jurist Office. London: Stevens and Haynes. 1882.)

The Legal Journal which publishes this Digest is so well known to Indian lawyers as to need little beyond our record of the period over which its latest issue extends. Mr. E. Fuller Griffin's name is a further guarantee of the general good quality of the work, which we commend to all who have to deal with the complexities of Hindoo and Mohammedan Law. In some respects, of course, there are features special to the Madras Presidency in the present work, which naturally afford us an insight into what is called Malabar Law, besides the two great divisions of Indian Jurisprudence. On this point, however, it may be well to recall the pertinent question asked by Mr. Nelson in a note at p. 116 of his valuable work on the *Scientific Study of Hindu Law* (London, 1881): "Do we yet know anything about Malabar customs?" It may yet prove to be a source of confusion that our Courts, both in India and at

home, should have been led to imagine that we know enough to adjudicate upon. A good illustration of the difficulties arising from the different meaning of the same term in English and Indian Law may be found in a Zemindary case, turning on the word "heirs," *Rajah Venkata Narasinha Appa Row Bahadur v. Rajah Narayya Appa Row Bahadur* (*Digest*, pp. 109-10, P.C., *Indian Jurist*, IV., 138). Here, curiously enough, as it may seem, the Madras High Court read "heirs" in the grant of the Zemindary to mean "heirs by primogeniture," and the Privy Council reversed, deciding that the heirs meant were the heirs of the grantee "according to the ordinary rule of Hindoo Law."

Stone's Practice for Justices of the Peace, &c. Ninth Edition. By WALTER HENRY MACNAMARA, Esq., of the Inner Temple, Barrister-at-Law, Registrar to the Railway Commissioners. Stevens and Sons. H. Sweet. W. Maxwell and Son. 1882.

Mr. Macnamara's editorial work has already been noticed in this *Review* with the commendation which we have always found it deserve. His present re-casting of Stone's *Justices of the Peace* affords fresh proof that his hand has not lost its cunning since his promotion to a high official position. A ninth edition speaks for itself as to the estimation set by the Legal Profession on a work so frequently republished. The great value of such a book as Stone's, however, is not to be measured solely by its utility as a work of reference for Magistrates and their Clerks, and for practitioners at Sessions; it has a value, quite independently of this, for the householder and ratepayer, who may learn from its pages his rights as well as his liabilities as against the too frequently arbitrary action of Gas and Water Companies. Thus at p. 363, in the very useful list of Summary Convictions and Orders, the reader will find that the words of sec. 36 of 34 & 35 Vict., c. 41, empowering two Justices to convict summarily "undertakers neglecting or refusing to supply gas," has been decided to include the case of a company improperly cutting off the supply of gas (*Commercial Gas Company v. Scott*, L.R. 10 Q.B. 400; 44 L.J. M.C. 171), a fact which is probably among the large body of things not generally known. We have only to repeat that Macnamara's Stone's *Practice* is a work of very wide usefulness, alike for Justices and for the general public.

Quarterly Digest

OF

ALL REPORTED CASES.

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BY
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Of Lincoln's Inn, Esq., Barrister-at-Law.

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ALL REPORTED CASES,

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Law Reports, Law Journal Reports, Law Times
Reports, and Weekly Reporter,

FOR NOVEMBER, AND DECEMBER, 1881, AND JANUARY, 1882.*

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration.—

- (i.) **Ch. Div. F. J.**—*Conversion - Real Estate - Decree for Sale.*—In a partition action real estate belonging to three infants was ordered to be sold. The infants came of age and died, leaving their father heir-at-law and sole next of kin. The property was sold, but before the proceeds were paid into Court, the father died intestate: *Held* that the proceeds of sale formed part of his personal estate.—*Mordaunt v. Bennell*, 45 L.T. 585; 30 W.R. 227.
- (ii.) **Ch. Div. M. R.**—*Creditor's Claim*—21 Jac. I., c. 16.—In an administration action begun in December, 1878, by an executor, who was also a creditor, against a co-executor, the usual judgment was pronounced in December, 1879, and afterwards a claim was made by a creditor on a promissory note, dated November, 1873: *Held* that the claim was barred.—*Bray v. Toffield*, L.R. 18 Ch. D. 551; 50 L.J. Ch. 817; 45 L.T. 464; 30 W.R. 55.
- (iii.) **Ch. Div. F. J.**—*Creditor's Claim*—*Old Practice*—*Secured Creditor*—*Joint and Several Liability.*—Six persons having a joint account at a bank gave the bank a joint and several cash credit bond in Scotch form, a letter of guarantee, and three joint and several promissory notes, to secure over-drafts. One of the six died before the Judicature Acts came into operation, and a suit was brought to administer his estate: *Held*, that the bank could prove for the whole over-draft existing at the time of his death, without deducting subsequent payments by the co-obligors.—*Lovel v. Lovel*, 45 L.T. 252.
- (iv.) **Ch. Div. F. J.**—*Executors' Right to Impound*—*Legacy*—*Retainer out of Proceeds of Realty*—*Mortgage.*—Where executors and trustees have paid a legacy not charged on realty to a legatee who is also a residuary legatee of the proceeds of sale of the realty, the legatee covenanting to

* Cases reported only in the *Law Times Reports* and *Weekly Reporter* for January 28th, are postponed till the May Digest.

repay if required, and the personal estate proves insufficient to pay the legacy, the executors are entitled, as against a mortgagee, subsequent in date, of legatee's residuary interest, to retain thereout the amount of the pecuniary legacy?—*Moore v Moore*, 45 L.T. 466.

- (i.) **P. D. A. Div.**—*Renunciation of Next-of-Kin*—20 & 21 Vict., c. 77, s. 73.—All the next-of-kin of an intestate having renounced the grant of letters of administration, the Court granted administration to the brother-in-law of the intestate.—*In the goods of Tyn dall*, 30 W.R. 231.

Agreements and Contracts:—

- (ii.) **Q. B. Div.**—*Contract induced by Duress—Threat of Criminal Proceedings.*—The father and uncle of a liquidating debtor were induced to purchase the debtor's stock in-trade from the trustee by the representation that criminal charges under the Debtor's Act, 1869, would otherwise be brought against the debtor. A verdict by the jury for plaintiff in an action to enforce the contract, was set aside and judgment entered for defendants, though it did not appear that any particular charge against the debtor was specified.—*Seear v. Cohen*, 45 L.T. 589.
- (iii.) **Q. B. Div.**—*Contract of Apprenticeship—Place of Performance.*—A deed of apprenticeship contained no provision as to the place where the contract was to be performed by the master: Held that no stipulation could be implied that it was to be performed at the place where he carried on business at the time the deed was executed.—*Royce v. Charlton*, L.R. 8 Q.B.D. 1.
- (iv.) **Ch. Div. V. C. B.**—*Covenant not to use as Beer-shop—Notice—Breach—Right to sue.*—A. sold part of an estate to C. and covenanted with him not to sell any other part without requiring the purchaser to covenant not to erect, use, or permit to be used thereon a beer-shop. C. demised his part to N., and A. sold another part of the estate to B., who sold to P. his conveyance containing a covenant in the above terms. P. leased to F. who obtained a license to sell beer off the premises for a house thereon: Held that F. had constructive notice of, and was bound by the covenant, that he had committed a breach, and that N. could sue.—*Nicoll v. Fenning*, 30 W.R. 95.
- (v.) **Q. B. Div.**—*Hire of Shootings—Agreement not in Writing—Statute of Frauds, s. 4.*—An agreement which entitles one party on payment of money to go upon the land of the other party and exercise sporting rights there, and take away the game killed, is within sec. 4 of Statute of Frauds.—*Webber v. Lee*, 45 L.T. 591.

Bank:—

- (vi.) **H. L.**—*Current Account—Deposit of deeds to secure—Subsequent Sale.*—The owner of land deposited his title deeds with a bank to secure all sums then or thereafter due on general balance of his account, and afterwards, with the bank's knowledge, contracted to sell part of the property to one having notice of the deposit. The owner subsequently paid into the bank sums exceeding the amount due to the bank at the time of the contract; but the bank made fresh advances so that there was always a debt due to it. The purchaser paid the purchase-money by instalments to the vendor: Held that the bank had no charge on the land sold, nor on the purchase-money.—*London & County Banking Co. v. Ratcliffe*, L.R. 6 App. 722; 51 L.J. Ch. 28; 45 L.T. 322; 30 W.R. 109.

Bankruptcy:—

- (vii.) **C.A.**—*Act of Bankruptcy—Convicted Felon*—33 & 34 Vict. c. 23, s. 8.—A convicted felon may be made bankrupt upon an act of bankruptcy committed after conviction.—*Ex parte Graves, Re Harris*, L.R. 19 Ch. D. 1; 51 L.J. Ch. 1; 45 L.T. 397; 30 W.R. 61.

- (i.) **C. A.**—*Appeal—Interpleader—Bankruptcy Act, 1869, s. 71.*—An order of the Bankruptcy Court in interpleader proceedings, may be appealed against under sec. 71 of Bankruptcy Act.—*Ex parte Streeter, Re Morris, 45 L.T. 634; 30 W.R. 127.*
- (ii.) **C. A.**—*Appeal—Leave to Disclaim—Bankruptcy Act, 1869, s. 23.*—Where a trustee in bankruptcy had obtained unconditional leave to disclaim a lease, and had executed a disclaimer: *Held* that an appeal by the lessor was too late, though made within twenty-one days.—*Ex parte Sadler, Re Hawes, 30 W.R. 173.*
- (iii.) **C. A.**—*Appeal from County Court—Time—Bankruptcy Rules, 143, 144.*—An appeal from an order of a County Court judge was entered with the Registrar of the London Bankruptcy Court on Friday the 5th, the last day for entering it, but the appeal notice was not served on the County Court Registrar until Monday the 8th: *Held*, affirming **C. J. B.** (45 L.T. 446; 30 W.R. 64), that the appeal was out of time.—*Ex parte Lamb, Re Southam, 45 L.T. 639; 30 W.R. 126.*
- (iv.) **C. A.**—*Lease—Disclaimer—Tenant's Fictures.*—Decision of **C. J. B.** (sec. vi. p., 3) reversed.—*Ex parte Glegg, Re Latham.*—L.R. 19. Ch. D. 7; 45 L.T. 484; 30 W.R. 144.
- (v.) **C. J. B.**—*Liquidation—Joint and Separate Creditors—Transfer of Proceedings—Bankruptcy Act, 1869, s. 80.*—The joint and separate creditors of a firm having resolved on a liquidation by arrangement, the joint creditors afterwards, without notice to the separate creditors, passed a resolution for the transfer of the proceedings to another County Court: *Held* that the consent of the separate creditors was necessary.—*Ex parte Horrocks, Re Wood, 45 L.T. 559.*
- (vi.) **C. A.**—*Liquidation—Proof—Amendment—Secured Creditor.*—When a composition has been agreed upon, a secured creditor will not be allowed, four years after the proceedings, to amend his proof on the ground of mistake.—*Couldery v. Bartrum, 30 W.R. 141.*
- (vii.) **C. A.**—*Liquidation—Sale of Estate—No Discharge After-acquired Property.*—A liquidating debtor's estate was sold and the proceeds divided among the creditors, but no resolution for his discharge was passed. He began a new business and carried it on for three years: *Held*, affirming **C. J. B.** (30 W.R. 62), that the trustee was entitled to seize his stock-in-trade.—*Ex parte Wainwright, Re Wainwright, 45 L.T. 562; Ex parte Greener, Re Wainwright, 30 W.R. 125.*
- viii.) **C. A.**—*Liquidation—Sale of Goodwill.*—A sale by the liquidation trustee of the debtor's business with the goodwill, does not prevent the debtor from setting up business on his own account and soliciting his old customers.—*Walker v. Mottram, 30 W.R. 165.*
- (ix.) **C. J. B.**—*Production of Documents—Bankruptcy Act, 1869, s. 96.*—Under the trusts of a deed, a debt was due to a firm. All the members of the firm had changed since the date of the deed, and the present members became liquidating debtors: *Held* that in the absence of *prima facie* evidence that the debt formed part of the debtor's estate, the trustee in liquidation could not call on the executor of a deceased partner to produce the deed.—*Ex parte Smith, Re Brown, 45 L.T. 447.*
- (x.) **C. J. B.**—*Proof—Secured Creditor.*—A creditor who holds a mortgage from the bankrupt, and seeks to prove for the balance of his debt, Cannot be called upon to produce the mortgagor's title deeds in order to have his proof admitted.—*Ex parte Cass, Re Dunkley, 45 L.T. 560.*
- (xi.) **C. A.**—*Proof—Security—Partnership—Dissolution.*—B. and T. on the dissolution of a partnership which had existed between them, deposited the lease of premises to which they were jointly entitled with bankers

to secure advances to T., who carried on the business, the memorandum of deposit providing that B. was not to be liable beyond the deposit. T. became bankrupt: *Held* that the bankers could not prove without first deducting the value of T.'s half of the security.—*Ex parte West Riding Union Banking Co., Re Turner*, 45 L.T. 546; 30 W.R. 239.

- (i.) **C. A.**—*Receiver—Interference with—Contempt.*—A receiver having been appointed in the liquidation of a firm, the debtors' solicitor induced the receiver not to interfere with the continuance of their business by the debtors, and undertook to indemnify him: *Held* that this was a contempt of the Court of Bankruptcy, and that that Court could declare the solicitor liable for any loss sustained through his interference, and direct an account for the purpose of ascertaining such loss.—*Ex parte Hayward, Re Plant*, 45 L.T. 326.
- (ii.) **C. J. B.**—*Trustee—Sale to Partner.*—A trustee in bankruptcy cannot sell property of the bankrupt to his partner, even by auction.—*Ex parte Moore, Re Moore*, 45 L.T. 558; 30 W.R. 123.

Bill of Sale:—

- (iii.) **C. A.**—*Consideration*—41 & 42 Vict., c. 31, s. 8.—Decision of C. J. B. (see v., p. 4) reversed on the ground that no rent was due at the time of execution of the bill, and that the £25 was not paid till a week afterwards.—*Ex parte Ralph, Re Spindler*, 45 L.T. 482; 30 W.R. 52.
- (iv.) **Q. B. Div.**—*Registration—Affidavit of Attestation*—41 & 42 Vict., c. 31, s. 10.—In order that the registration of a bill of sale may be valid, an affidavit that the attesting witness was present at the execution of the bill is necessary.—*Sharp v. Birch*, 51 L.J. Q.B. 64.
- (v.) **C. A.**—*Registration—Description of Grantor*—41 & 42 Vict., c. 31, s. 10.—The grantor of a bill of sale was therein described as a widow, and no statement was made as to her occupation. She had been a licensed victualler for several years, but had ceased to be so about a month previously: *Held* that the description was sufficient.—*Ex parte Chapman, Re Davey*, 45 L.T. 268.
- (vi.) **C. A.**—*Substitution of Security—Discharge in Bankruptcy.*—Decision of V. C. H. (see vii., p. 4) reversed.—*Collyer v. Isaacs*, 51 L.J. Ch. 14; 45 L.T. 567; 30 W.R. 70.

Company:—

- (vii.) **C. A.**—*Calls—Action to Restrain Enforcement of.*—On an application by D., on behalf of himself and all other shareholders of a company, to restrain the enforcement of a call made by the directors until after a special general meeting had been held to decide whether the directors should be superseded: *Held* that such an order could not be made except where there was evidence of an improper motive in making the call.—*Anglo-Universal Bank v. Baragon*, 45 L.T. 362.
- (viii.) **C. A.**—*Debenture Stock—Priority.*—A railway company were empowered by their Act to borrow £250,000 on mortgage, and to issue debenture stock subject to the provisions of part 3 of the Companies Clauses Act, 1863; but all debenture stock at any time created should rank *pari passu* with the interest of all mortgages at any time granted by the company, and should have priority over all principal moneys secured by such mortgages. By a subsequent Act, the company were empowered to borrow on mortgage to the extent of £25,000, and the Act gave similar powers of issuing debenture stock and provided that the interest of all debenture stock created after the passing of the Act should rank *pari passu* with the interest of mortgages created after the Act, and have priority over the principal moneys of such mortgages: *Held* that the interest on mortgages and debenture stock created before the second Act had

priority over the interest on debenture stock issued after the second Act; and that the principal of mortgages issued under the first Act would be payable in priority to interest of debenture stock issued after second Act.—*Harrison v. Cornwall Minerals Rail. Co.*, L.R. 18 Ch. D. 334; 45 L.T. 498.

- (i.) **Q. B. Div.**—*Registration—Companies Act, 1862, s. 4.*—An association of more than twenty members formed for the purchase of an estate, the division of it into allotments, and the sale of the allotments to members by auction: *Held* not an association which required to be registered under sec. 4 of Companies Act, 1862.—*Wigfield v. Potter*, 45 L.T. 612.
- (ii.) **C. A.**—*Winding-up—Contributory—Bankrupt—Locus Standi.*—An undischarged bankrupt, though on the list of contributories, is a stranger to winding-up proceedings of a company, and has no *locus standi* to make any application therein.—*Re Cape Breton Company*, 45 L.T. 395.
- (iii.) **Ch. Div. V. C. B.**—*Winding-up—Contributory—Prepayment of Calls—Companies Act, 1862, s. 84.*—After presentation of winding-up petition but before any order was made thereon, P. paid £25 to the directors in anticipation of calls: *Held* that the £25 could only be treated as a loan to the company, and not as prepayment of calls made by the liquidator.—*Pennington's Case, Re Exchange Banking Co.* 45 L.T. 433.
- (iv.) **C. A.**—*Winding-up—Examination of Witnesses by Contributory—Companies Act, 1862, s. 115.*—Decision of Fry, J. (sec. i., p. 6) affirmed.—*Whitworth's Case, Re Silkstone, &c., Coal Co.*, 45 L.T. 449; 30 W.R. 33.
- (v.) **Ch. Div. V. C. H.**—*Winding-up—Life Assurance—Reduction of Contracts—33 & 34 Vict., c. 61, s. 22.*—Where, on the hearing of a petition to wind-up a life assurance company, the Court directs a scheme to be settled for reduction of contracts under sec. 22 of Life Assurance Companies Act, 1870, the date of presentation of the petition is the date at which the rights of policy holders and annuitants are to be determined, and those whose claims have matured at that date must be paid in full.—*Re Great Britain Mutual Life Assurance Society*, 51 L.J. Ch. 7; 45 L.T. 554; 30 W.R. 145.
- (vi.) **Ch. Div. M. R.**—*Winding-up Petition—Disputed Debt—Injunction.*—The Court has jurisdiction to restrain by injunction a person claiming to be creditor of a company from presenting a winding-up petition, when the debt is *bond fide* disputed and the company solvent.—*Cercle Restaurant Castiglione Co. v. Lavery*, L.R. 18 Ch. D. 555; 50 L.J. Ch. 837.

Copyholds:—

- (vii.) **Ch. Div. V. C. B.**—*Custom of Descent—Jus Representationis.*—The custom of a manor was that all copyholds descended to the youngest son or daughter, brother or sister, uncle or aunt. A tenant died intestate seized of customary lands, and leaving no one surviving him answering this description, but having sons of deceased uncles: *Held* that the youngest son of the youngest uncle who left sons was not entitled; but that the lands went to the heir-at-law.—*Smart v. Smart*, L.R. 18 Ch. D. 165; 30 W.R. 43.

County Court:—

- (viii.) **C. A.**—*Cause Remitted to—Appeal—30 & 31 Vict., c. 142, s. 10—Judicature Act, 1873, s. 45.*—An action brought in the High Court and remitted for trial before a County Court under sec. 10 of 30 & 31 Vict., c. 142, becomes a cause in the County Court within sec. 45 of Judicature Act, 1873.—*Bowles v. Drake*, 51 L.J. Q.B. 66; 45 L.T. 576.
- (ix.) **C. A.**—*Committal—Jurisdiction—Judicature Act, 1873, s. 89.*—The power of a County Court under sec. 89 of Judicature Act, 1873, to

enforce obedience to its orders by committal, extends to interlocutory as well as final orders.—*Richards v. Cullerne*, L.R. 7 Q.B.D. 623.

- (i.) **Q. B. Div.**—*Ejectment—Time for delivery of Summons—County Court Rules, 1875, Ord. 8, r. 7—Appeal.*—In an ejectment action in a County Court, the summons must be delivered to the bailiff forty clear days before the return day; and the judge has no power to waive this condition. If he does do so, the High Court will, on defendant's application, set aside the judgment.—*Barker v. Palmer*, L.R. 8 Q.B.D. 9; 45 L.T. 480; 30 W.R. 59.

Crimes and Offences:—

- (ii.) **Q. B. Div.**—*Betting—House, Room, or other Place for*—16 & 17 Vict., c. 119, s. 1.—Respondent stood on a small box within the ring at a race meeting, and made bets there during the day: *Held* that the box constituted a "place" within sec. 1 of Betting Houses Act.—*Galloway v. Maries*, 30 W.R. 151.
- (iii.) **C. C. R.**—*False Pretence*.—8 & 9 Vict., c. 109, s. 17.—Prosecutor was induced by the prisoners to toss for wagers with one of them and lost, and prisoners took away with them, his watch: *Held* that this was a game, sport, pastime or exercise within 8 & 9 Vict., c. 109, s. 17.—*Regina v. O'Connor*, 45 L.T. 512.
- (iv.) **Q. B. Div.**—*Fishing in Close Season—Leave of Owner*—11 & 12 Vict., c. 39, s. 11.—Respondent was seen fishing in a several fishery, and fish were found upon him. He was fishing there by leave of the occupier of the adjoining land: *Held* that he might be convicted under sec. 11 of Freshwater Fisheries Act, 1878.—*Swanwick v. Varney*, 30 W.R. 79.
- (v.) **C. C. R.**—*Inflicting Grievous bodily harm—Malice*—24 & 25 Vict., c. 110, s. 20.—Prisoner, with the intention of alarming the persons in a theatre, extinguished the lights and obstructed the means of exit by placing a bar across the doorway, whereby two persons were injured: *Held* that he was rightly convicted of unlawfully and maliciously inflicting bodily harm, under sec. 20 of 24 & 25 Vict., c. 100.—*Regina v. Martin*, L.R. 8 Q.B.D. 54; 45 L.T. 444; 30 W.R. 106.
- (vi.) **Q. B. Div.**—*Sale of Poisons*.—31 & 32 Vict., c. 121, s. 17.—Respondent sold at his shop a poison which was labelled with the name and address of a duly qualified chemist, who supplied and for whom he sold it, but not with respondent's name and address: *Held* that respondent was the seller within sec. 17 of Pharmacy Act, 1868.—*Templeman v. Trifford*, 51 L.J. M.C. 4; 30 W.R. 78.

Debtor and Creditor:—

- (vii.) **Ch. Div. C. J.**—*Attachment of Debt—Compulsory Sale to Railway Company—Purchase-Money*—Ord. 45, r. 3.—Where a railway company has taken leaseholds compulsorily, and the amount of the purchase-money has been assessed by a jury, but the conveyance has not been executed, the purchase-money does not constitute a debt attachable under Ord. 45, r. 3.—*Howell v. Metropolitan District Railway Co.*, 30 W.R. 100.
- (viii.) **Q. B. Div.**—*Charging Order—Stock in trust for Debtor and Others—Interest determinable on Alienation*—1 & 2 Vict., c. 110, s. 14.—*Held* that a charging order could be made under 1 & 2 Vict., c. 110, s. 14, on stock standing in the names of trustees on trust to pay the income in moieties to the judgment debtor and another, the judgment debtor's interest being determinable on alienation, with an ultimate remainder in his favour on failure of intermediate trusts.—*South-Western Loan Co. v. Robertson*, L.R. 8 Q.B.D. 17; 30 W.R. 102.

- (i.) **C. A.**—*Price of Officer's Commission—Incumbrancers—Notice—Priority.* The incumbrancer who gives notice to the army agents who have received the money paid by the Army Purchase Commissioners for an officer's commission, first after the publication in the *Gazette* announcing the officer's retirement, will have priority; and where several give notice simultaneously, they will rank according to the seniority in date of the instruments creating their incumbrancers. —*Johnstone v. Cox*, L.R. 19 Ch. D. 17; 30 W.R. 114.

Defamation :—

- (ii.) **C. A.**—*Libel—Privileged Communication.*—When a communication, otherwise libellous, is made without malice, and in the *bond fide* belief of the person making it, that he is discharging some duty, legal, social, or moral, it is privileged. —*Waller v. Loch*, L.R. 7 Q.B.D. 619; 45 L.T. 242; 30 W.R. 18.

Ecclesiastical Law :—

- (iii.) **Archies Ct.**—*Deprivation—Contumacy*—3 & 4 Vict., c. 86.—The official principal of the Court of Arches has jurisdiction to deprive *ab officio et a beneficio* a clergyman holding a benefice in the province of Canterbury, who has been proved in a criminal suit in that Court to have been guilty, within two years of institution of suit, of contumacy, of incorrigible disobedience to the ordinary and the canons of the Church, and to have failed to observe the Book of Common Prayer. —*Combe v. De la Bere*, L.R. 6 P.D. 157.
- (iv.) **H. L.**—*Jurisdiction of Judge at Westminster—Significavit—Execution in County Palatine of Lancaster*—5 Eliz., c. 23, s. 11—53 Geo. III., c. 127—*Public Worship Regulation Act*, 1874.—Lord Penzance, when required by the Archbishop of York to hear the matter of a representation in the province or in London or Westminster, under sec. 9 of Public Worship Regulation Act, 1874, has jurisdiction to dispose of every matter pending or subsequent to the hearing, being part of the matter of the complaint. The proceedings against a contumacious clerk within County Palatine of Lancaster, under 53 Geo. III., c. 127, are similar to those required on a writ *de excommunicato capiendo* by 5 Eliz., c. 23, s. 11.—*Green v. Lord Penzance*, L.R. 6 App. 657; 51 L.J. Q.B. 25; 45 L.T. 353; 30 W.R. 218.

Election :—

- (v.) **Q. B. Div.**—*Bribery—Prosecution for Penalties—Wilful Delay*—17 & 18 Vict., c. 102, s. 14.—Plaintiff having brought an action for bribery, his solicitor tried to effect a compromise to which defendant was not personally a party. No steps in the action having been taken for a year, it was on defendant's application dismissed on the ground of wilful delay under sec. 14 of Corrupt Practices Act, 1851.—*Quest v. Caldicott*, 45 L.T. 609; 30 W.R. 122.
- (vi.) **Q. B. Div.**—*Parliament—Borough Vote—Notice of Objection—Amendment*—41 & 42 Vict., c. 26, s. 28.—The notice of objection to a voter omitted to state the residence of objector, but described him as on the list of voters for H. There was no other person of the same name on the list, and objector was well known: Held that the revising barrister was justified in amending the objection by supplying the omission.—*Adams v. Bostock*, 45 L.T. 443.

Friendly Society :—

- (vii.) **C. A.**—*Loan on Personal Security—Illegal Contract*—38 & 39 Vict., c. 60, s. 16.—Decision of Fry, J. (see iii., p. 8) reversed.—*Coltman v. Coltman*, 51 L.J. Ch. 3; 45 L.T. 392.

Highway :—

- (i.) **Q. B. Div.**—*Extraordinary Traffic*—41 & 42 Vict., c. 77, s. 83.—On a summons against respondent under sec. 23 of Highways and Locomotives Amendment Act, 1878, the justices found that the traffic conducted by respondent was excessive and extraordinary as compared with the ordinary traffic, but that it did not materially differ in character from that to be expected on the highway: *Held* that respondent was not liable for the damage to the highway.—*Pickering Lythe East Highway Board v. Harry*, L.R. 8 Q.B.D. 59; 45 L.T. 655; 30 W.R. 246.
- (ii.) **Q. B. D.**—*Repair—County Bridge—Expired Trust*—33 & 34 Vict., c. 73, s. 12.—When a toll bridge has been built and a turnpike road made in connection with it under a local Act, on the termination of the period of trust, the bridge, though within a municipal borough, becomes a county bridge under sec. 12 of 33 & 34 Vict., c. 73, so as to be repairable by the inhabitants of the county.—*Regina v. Inhabitants of Dorset*, 45 L.T. 308.
- (iii.) **C. A.**—*Repair—Disturnpiked Road*—41 & 42 Vict., c. 77, s. 13.—Sec. 13 of Highways and Locomotives (Amendment) Act, 1878, applies to the case of roads which have been disturnpiked by operation of ss. 47-50 of 10 & 11 Vict., c. 34, in consequence of the extension of the boundaries of a borough between Dec. 31, 1870, and the passing of the first-mentioned Act.—*Mayor of Rochdale v. Lancashire Justices*, L.R. 8 Q.B.D. 12; 51 L.J. M.C. 1; 45 L.T. 425; 30 W.R. 130.

Husband and Wife :—

- (iv.) **Ch. Div. M. R.**—*Covenant to Settle after-acquired Property—Married Woman Infant—Election*.—An agreement in a marriage settlement, for the settlement of the wife's after-acquired property, is a covenant by the wife as well as the husband; and when the wife is a minor the covenant is voidable and not void; and she may, on coming of age and during coverture, elect whether it shall bind her separate estate; but such resolution will only bind separate estate of which she is possessed when the election is made.—*Smith v. Lucas*, L.R. 18 Ch. D. 531; 45 L.T. 430.
- (v.) **P. D. A. Div.**—*Divorce—Maintenance*—29 & 30 Vict., c. 32.—Under sec. 1 of 29 & 30 Vict., c. 32, the Court has power in every case to vary from time to time an order for permanent maintenance, and to order payment by monthly instalments.—*Jardine v. Jardine*, L.R. 6 P.D. 218; 51 L.J. P.D.A. 4; 30 W.R. 91.
- (vi.) **Q. B. Div.**—*Dower—Release by Widow to Mortgagee*.—On mortgage of freeholds by the heir-at-law of an intestate, the widow, who was entitled to dower joined in the mortgage and thereby "for the purpose of extinguishing her right to dower," she granted and released the freeholds to the mortgagees. The deed provided that on repayment of the mortgage debt, the property should revert in the person or persons interested in the equity of redemption. The debt was paid off: *Held* that the widow was entitled to have dower assigned to her out of the freeholds.—*Meek v. Chamberlain*, L.R. 8 Q.B.D. 31; 30 W.R. 228.
- (vii.) **P. D. A. Div.**—*Marriage—Wrong Name in License*.—On a marriage by license, the husband was described in the license as R. L. H., his real name being R. H.: *Held* that the misdescription did not invalidate the marriage.—*Haswell v. Haswell*, 30 W.R. 231.
- (viii.) **P. D. A. Div.**—*Marriage in Foreign Country subject to British Dominion*.—A marriage between British subjects before a Roman Catholic priest in British Burmah: *Held* to be valid.—*James v. James*, 30 W. R. 232.

- (i.) **Q. B. Div.**—*Separate Estate—Action for Debt—Form of Order.*—Form of order in an action against husband and wife, seeking to charge the wife's separate estate.—*McQueen v. Turner*, 30 W.R. 80.
- (ii.) **Ch. Div. V. C. H.**—*Separate Estate—Petition for Payment Out*—33 & 34 Vict., c. 93, s. 11.—A married woman can present a petition for payment out of Court of her separate estate without appearing by her next friend.—*Re Fisher's Trusts*, 45 L.T. 504; 30 W.R. 56.
- (iii.) **Q. B. Div.**—*Wife's Ante-nuptial Debts*—37 & 38 Vict., c. 50, s. 5.—When an ante-nuptial creditor of the wife brings an action against husband and wife, and the husband confesses his liability to the amount of the assets received with his wife, and before judgment is recovered another ante-nuptial creditor brings a like action, the husband is protected against the second creditor by sec. 5 of Married Woman's Property Amendment Act, 1874.—*Fear v. Castle*, 45 L.T. 544.

Justice of Peace :—

- (iv.) **Q. B. Div.**—*Disqualification—Coroner.*—A justice of the peace does not become disqualified from acting by reason of his being elected coroner for the county for which he acts.—*Davis v. Justices of Pembroke-shire*, L.R. 7 Q.B.D. 513.
- (v.) **Q. B. Div.**—*Disqualifying Interest—Prosecution for Cruelty to Animals.*—A prosecution was instituted by the officer of the Society for Prevention of Cruelty to Animals for an offence under the Act at D., where there is a local branch of the Society: *Held* that the subscribing to the local branch did not constitute such an interest as to disqualify the justices.—*Regina v. Deal Justices*, 45 L.T. 439; 30 W.R. 154.

Landlord and Tenant :—

- (vi.) **Ch. Div. V. C. B.**—*Agreement for Lease—Mistake—Specific Performance with Abatement.*—Defendant agreed to grant to plaintiff a lease of premises, but afterwards found that she was only entitled to an undivided moiety, the other moiety being vested in her son, an infant. Specific performance was granted in respect of defendant's moiety, with abatement of half the rent; but compensation with respect of plaintiff's liability to eviction was refused.—*Burrow v. Scammell*, 45 L.T. 606.
- (vii.) **C. A.**—*Agreement for Lease—Specific Performance—Commencement Uncertain.*—Specific performance will not be enforced of an agreement to grant a lease when no time for commencement is fixed by the agreement.—*Marshall v. Berridge*, 45 L.T. 599; 30 W.R. 93.
- (viii.) **C. A.**—*Distress—Lodger*—34 & 35 Vict., c. 79.—To constitute a person a lodger within the Lodgers' Goods Protection Act, 1871, there must be evidence of the retention by the immediate landlord of some such dominion over the house, as a master of the house let in lodgings usually has.—*Morton v. Palmer*, 51 L.J. Q.B. 7; 45 L.J. 426; 30 W.R. 115.

Lands Clauses Act :—

- (ix.) **Ch. Div. V. C. H.**—*Re-investment—Charity Commissioners*—18 & 19 Vict., c. 124, s. 35.—The consent of the Charity Commissioners is not required to a petition by trustees of a charity for re-investment in land under the Lands Clauses Act.—*Re William of Kyngeston Charity*, 30 W.R. 78.

Licensed House :—

- (x.) **Q. B. Div.**—*Application for License—Refusal*—32 & 33 Vict., c. 27, s. 8; 35 & 36 Vict., c. 94, s. 45.—On an application for a license to sell wine, &c., off the premises, the justices, in applicant's presence, read a minute in writing stating the grounds of refusal. No request was made by applicant for a copy of the minute: *Held* that the requirements of sec. 6 of

Wine and Beerhouse Act, 1869, had been sufficiently complied with. Section 45 of Licensing Act, 1872, applies only to licenses to sell on the premises.—*Regina v. Cumberland Justices*, 30 W.R. 178.

- (i.) **Q. B. Div.**—*Day next Appointed*—44 & 45 Vict., c. 61, s. 3.—The "day next appointed" in sec. 3 of Sunday Closing (Wales) Act, 1881, means the day appointed after the passing of the Act.—*Richard v. McBride*, 30 W.R. 120.

Lunacy:—

- (ii.) **H. L.**—*Committee—Execution of Deed by*.—A deed to which a lunatic is expressed to be a party by his committee is sufficiently executed by the committee affixing seals and signing their own names.—*Lawrie v. Lees*, 30 W.R. 185.

Master and Servant:—

- (iii.) **Q. B. Div.**—*Cab Proprietor—Liability for Driver's Negligence*—6 & 7 Vict., c. 86.—Where, by the terms of the contract between a cab proprietor and driver, the relation, if master and servant, is not established, there is nothing in the Hackney Carriage Act, which imposes on them the existence of such a relation, so as to render the proprietor liable for the negligent driving of the driver.—*King v. Spurr*, 30 W.R. 152.

Metropolitan Management:—

- (iv.) **Q. B. Div.**—*General Line of Building—Time for taking Proceedings*—11 & 12 Vict., c. 43, s. 11; 25 & 26 Vict., c. 102, s. 75.—The general line of buildings referred to in the Metropolis Management Amendment Act, 1862, s. 75, exists independently of the architect's certificate. Sec. 11 of 11 & 12 Vict., c. 43, applies to proceedings under sec. 75 of the Act of 1862, which must therefore be taken within six months.—*Paddington Vestry v. Snow*, 45 L.T. 475; 30 W.R. 46.
- (v.) **Q. B. Div.**—*New Street*—25 & 26 Vict., c. 102, s. 98.—A road formed and laid out for the purposes of carriage traffic must be the full width of forty feet and open at both ends.—*Metropolitan Board of Works v. Steed*, 45 L.T. 611.

Mortgage:—

- (vi.) **C. A.**—*Attornment Clause—Distress—Bankruptcy*.—Rent secured by an attornment clause in a mortgage deed is a security for the principal as well as the interest of the mortgage debt.—*Ex parte Harrison, Re Betts*, L.R. 18 Ch. D. 127; 50 L.J. Ch. 832; 45 L.T. 290; 30 W.R. 38.
- (vii.) **Ch. Div. V. C. B.**—*Book-Debts*.—By a mortgage, not registered as a bill of sale, H. assigned, together with the goodwill of his business and the leasehold premises in which it was carried on, all present and future stock-in-trade and effects; and there was a provision that H. should keep proper books of account with entries of all moneys, goods, debts, and effects, belonging or owing to H.: Held that the assignment included book-debts.—*Brown v. Fryer*, 45 L.T. 521.
- (viii.) **Ch. Div. F. J.**—*Foreclosure—Interest*.—Where there are successive mortgages, and the usual foreclosure decree is made, interest subsequent to the last certificate is computed on the whole amount found due by that certificate, including interest and costs.—*Elton v. Curteis*, L.R. 19 Ch. D. 49; 30 W.R. 435.
- (ix.) **Ch. Div. K. J.**—*Fraud—Personation—Rights of Innocent Persons*.—A, fraudulently obtained possession of title deeds to property of his deceased father, and, without the knowledge of the persons interested in the property, executed a mortgage of it under circumstances which

were held to amount to a purchase of the estate; and that mortgage was void as against the mortgagee's creditors. *Truman v. Redgrave*, L.R. 18 Ch. D. 547; 50 L.J. Ch. 890; 45 L.T. 605.

- (i) **Ch. Div. M. R.—Mortgages—Right to Possession—Receiver and Manager—Injunction.**—The legal mortgagee of business premises, who is prevented by the mortgagor from taking possession under the mortgage, may obtain, on interlocutory application, the appointment of a receiver and manager, and an injunction restraining the mortgagor from interfering with the business and possession of the premises.—*Truman v. Redgrave*, L.R. 18 Ch. D. 547; 50 L.J. Ch. 890; 45 L.T. 605.

- (ii.) **C. A.—Priority—Misappropriation—Implied Trust.**—The owner of copyhold property subject to a mortgage for £350 instructed his solicitor, S., to raise £550 on the property and thereout to pay off K. S. obtained the money from H. on this understanding; but he paid it into his own account at his bankers, and by cheques drawn on them paid off K., and advanced the owner £350, taking a transfer to himself of K.'s mortgage, and a further mortgage from the owner. The money thus advanced was obtained from the bankers on S.'s depositing with them the deeds of transfer and further mortgage. The bankers, after the fraud was discovered, got admitted to the property through K.: Held that H.'s equitable mortgage must rank in priority to the banker's charge under S.'s deposit of deeds.—*Harpham v. Shacklock*, 45 L.T. 569; 30 W.R. 49.

- (iii.) **H. L.—Redemption—Consolidation.**—As against the purchaser of an equity of redemption, there can be no consolidation of a mortgage subsequently created by his vendor on another estate.—*Jennings v. Jordan*, L.R. 6 App. 698; 45 L.T. 593.

Municipal Law :—

- (iv.) **H. L.—Conveyance of Prisoners to Prison—40 & 41 Vict., c. 21, ss. 4, 57.**—The Prisoners Act, 1877, transfers the liability for the expenses of conveying to prison a prisoner committed by justice summarily or for trial, from the county treasurer to the Secretary of State.—*Mullins v. Treasurer of Surrey* 45 L.T. 625; 30 W.R. 157.
- (v) **Q. B. Div.—Free Libraries Act, 1855 s. 6—Adoption by Resolution—Demanding Poll—40 & 41 Vict., c. 51.**—Where, at a meeting of ratepayers convened under sec. 6 of Free Libraries Act, 1855, a resolution in favour of adopting the Act is carried, any ratepayer has a right to demand a poll.—*Regina v. Wimbledon Local Board*, 45 L.T. 441.
- (vi.) **Ch. Div. V. C. H.—Improvement Scheme—Ancient Lights—38 & 39 Vict., c. 36, s. 20.**—The provisions of the Artizans' Dwellings Improvement Act, 1875, with regard to the extinction of rights and easements in, or relating to land purchased under the Act, apply to ancient lights in premises adjoining the land purchased.—*Radham v. Mann*, 45 L.T. 579.

Nuisance :—

- (vii.) **Ch. Div. F. J.—Reversioner—Permanent Nuisance—Trespass—Right to Sue.**—A reversioner, not personally in possession of land, cannot bring an action in respect of acts causing a nuisance to the persons in occupation unless there is actual injury to the reversion, or the nuisance is of such a permanent nature that injury to the reversion will be implied; nor can he bring an action of trespass.—*Cooper v. Crabtree*, 45 L.T. 587.

Partition :—

- (viii.) **Ch. Div. F. J.—Agreement for—Permanent Improvements—Allowances.**—An agreement for partition was come to by tenants in common, under which a sum of money was to be paid for equality of partition. The

agreement was not carried out, but the parties took possession of the parts of the property allotted to them, and expended money on improvements. An action for partition having subsequently been brought on the basis of the agreement: *Held* that the amount payable for equality of partition was to be calculated on the present value of the properties with allowances for expenditure on permanent improvements.—*Watson v. Gaas*, 45 L.T. 582.

Poor Law:—

- (i.) **Q. B. Div.—Rate—Market Tolls.**—Prior to the passing of a private Act a market granted to appellant under a royal charter, had been open, and without division, and tolls were taken for goods exposed for sale there. By the private Act the market was divided into stands appropriated for certain purposes, and the tolls specified in the Act were authorised to be taken in respect of the stands: *Held* that these tolls were liable to be rated.—*Regina v. Duke of Bedford*, 45 L.T. 616.
- (ii.) **C. A.—Rate—59 Geo. III., c. 12, s. 19.**—Sec. 19 of 59 Geo. III., c. 12, does not apply to a house let for any less term than a year, unless the yearly rent is not exceeding £20 nor less than £6.—*Iles v. West Ham Assessment Committee*, 51 L.J. Q.B. 17.
- (iii.) **Q. B. Div.—Removal Order—Costs—28 & 29 Vict., c. 79, s. 3.**—Sec. 3 of Union Chargeability Act, 1865, applies to costs on abandonment of order of removal.—*Regina v. Sheil*, 30 W.R. 134.
- (iv.) **Q. B. Div.—Settlement—Widow—Removability—9 & 10 Vict., c. 66, s. 1.**—After a husband and wife had, by residence in a union, acquired irremovability under sec. 1 of Poor Removal Act, 1846, the husband went to reside elsewhere, and afterwards died, leaving the widow still residing in the union: *Held* that she was removable.—*Regina v. Manchester Overseers*, L.R. 8 Q.B.D. 50; 51 L.J. M.C. 6; *Manchester Overseers v. Prestwich Guardians*, 30 W.R. 247.

Practice:—

- (v.) **Ch. Div. C. J.—Adding Plaintiff—Consent—Ord. 16, r. 13.**—The consent required by Ord. 16, r. 13 to be given by a person whom it is proposed to add as plaintiff need not be in writing.—*Cox v. James*, L.R. 19 Ch. D. 55; 45 L.T. 471; 30 W.R. 228.
- (vi.) **C. A.—Appeal—Costs—Interpleader—Judge at Chambers—Judicature Act, 1873, s. 49—Ord. 1, r. 2.**—No appeal lies from an order made in an interpleader issue as to the costs only. An order purporting to be made by a Judge at Chambers is valid though the Judge, when he made it, was not in Judge's Chambers.—*Hurtmont v. Foster*, 51 L.J. Q.B. 12; 45 L.T. 429; 30 W.R. 129.
- (vii.) **C. A.—Appeal—Extension of Time—Ord. 58, r. 9, 15.**—On a petition under the Lands Clauses Act for payment out of a fund in Court representing the purchase-money of a devised estate, the Court made an order declaring the construction of the will and directing inquiries as to parties: *Held* that though the order was within Ord. 58, r. 9, yet as it was in effect final, an extension of time for appealing ought to be granted, some of the parties interested being in America.—*Ex parte Carlisle Corporation*, *Re Jaques*, L.R. 18 Ch. D. 392; 45 L.T. 297.
- (viii.) **C. A.—Appeal—Security for Costs—Ord. 58, r. 15.**—The mere poverty of an appellant is sufficient ground for requiring security for costs of appeal.—*Harlock v. Ashberry*, 45 L.T. 602; 30 W.R. 112.
- (ix.) **C. A.—Appeal—Staying Proceedings Pending—Ord. 58, r. 16, 17.**—When an action has been dismissed with costs, an application by plaintiff to stay proceedings pending an appeal must be made first to the Court below.—*Otto v. Lindford*, L.R. 18 Ch. D. 394.

- (i.) **Ch. Div. C. J.**—*Appeal—Summons in Chambers.*—Where it is desired to appeal from an order on summons in Chambers in the Chancery Div., which has not been adjourned into Court, the party wishing to appeal should move the Court below to discharge the order made in Chambers.—*Holloway v. Cheston*, 80 W.R. 120.
- (ii.) **C. A.**—*Appeal from Chambers—Time—Judicature Act, 1873, s. 50.*—In the Chancery Div. the limit of time for appealing to a Judge from an order made in Chambers is twenty-one days from the drawing-up of an affirmative order, or from the making of a refusal order.—*Heatly v. Newton*, 45 L.T. 455; 30 W.R. 72.
- (iii.) **P. C.**—*Appeal from Vice-Admiralty Court—Time.*—The time for appealing from the judgment of a Vice-Admiralty Court is fifteen days from the date on which the judgment is pronounced.—*The Brinhilda*, 45 L.T. 389.
- (iv.) **C.A.**—*Attachment of Debt—Trust Money—Ord. 45, rr. 6, 7.*—Where, in garnishee proceedings, there is a reasonable suspicion that money sought to be attached does not belong to the judgment debtor, the Judge has jurisdiction to order an issue to be tried whether or not the money is trust money, though no suggestion has been made by the garnishee under Ord. 45, r. 6.—*Roberts v. Death*, 51 L.J. Q.B. 15; 30 W.R. 76.
- (v.) **Ch. Div. C. J.**—*Award—Motion to Set aside—Form of Notice.*—A notice of motion in the Chancery Div. to set aside an arbitrator's award, should specify the grounds of objection.—*Mercier v. Pepperell*, L.R. 19, Ch. D. 58; 45 L.T. 609; 30 W.R. 228.
- (vi.) **Ch. Div. F. J.**—*Certificate of Chief Clerk—Variation of.*—An order directing a chief clerk's certificate to be varied and part struck out does not mean that the original certificate is to be so altered, but that it is to be read as if so altered.—*For v. Bearblock* (2), 45 L.T. 469; 30 W.R. 119.
- (vii.) **C. A.**—*Costs—Administration Action—Ord. 55, r. 1—Judicature Act 1873, s. 49.*—A residuary legatee or executor who brings an administration action is entitled to costs out of the estate unless special grounds are shown for depriving him of them; and when he has been deprived of his costs without special grounds an appeal will lie.—*Farrow v. Austin*, L.R. 18 Ch. D. 58; 45 L.T. 227; 30 W.R. 50.
- (viii.) **C. A.**—*Costs—Appeal—Incumbrances—Priority.*—In an action to determine the respective rights of incumbrancers on a fund, the Court directed that the costs of all parties should be first paid out of the fund, and that the residue should go to the incumbrancers in order of priority. The fund was insufficient: *Held* that an appeal by the first incumbrancer would lie from this order, and that the proper order was that each incumbrancer should add his costs to the amount of his incumbrance.—*Johnstone v. Cox*, L.R. 19 Ch. D. 17; 30 W.R. 114.
- (ix.) **Ch. Div. F. J.**—*Costs—Co-Defendants—Contribution.*—Where co-defendants are ordered to pay the costs of an action, one of them cannot, by an independent proceeding, obtain contribution in respect of the costs from the other.—*Dearnley v. Middleweek*, L.R. 18 Ch. D. 236; 51 L.J. Ch. 777; 45 L.T. 404; 30 W.R. 45.
- (x.) **Q. B. Div.**—*Costs—Elegit—Ord. 42, r. 13.*—An execution creditor in possession of the debtor's lands under an *elegit* is not entitled to an order to tax costs of the proceedings by writ, and of the sequestration, and add them to the judgment debt.—*Mahon v. Miles*, 45 L.T. 540; 30 W.R. 123.

- (i.) **C. A.**—*Costs—Taxation—Interlocutory Application.*—Though the costs of copies of pleadings supplied to counsel and judges are allowed only, as a general rule, at the hearing of a cause, they will be allowed on an interlocutory application when the Court would not be able to understand the question raised without such copies.—*Warner v. Mosses*, 45 L.T. 359.
- (ii.) **Ch. Div. C. J.**—*Costs—Taxation—Mistake in Order.*—An order for taxation of a solicitor's bill of costs was obtained, and the taxation nearly completed: *Held* that an application to vary the order on the ground of a mistake appearing on the face of it ought to have been made directly the mistake was discovered.—*Re Tibbitts*, 30 W.R. 177.
- (iii.) **C. A.**—*Costs—Taxation—Shorthand Notes.*—The costs of shorthand writer's notes of evidence will not be allowed on taxation unless there is a direction to that effect in the order; and such direction will only be given in exceptional cases.—*Earl De la Warr v. Miles*, 45 L.T. 424; 30 W.R. 35.
- (iv.) **C. A.**—*Debtor's Summons—Action against Firm—Judgment by Default—Retired Partner*—Ord. 16, r. 10; 42, r. 8.—Where an action has been brought against a partnership in the name of the firm, and judgment by default signed against the firm, a debtor's summons cannot be taken out against a former partner who had retired at date of writ.—*Ex parte Young, Re Young*, 45 L.T. 493.
- (v.) **C. A.**—*Demurrer for want of Parties*—Ord. 28, r. 1.—There cannot now be a demurrer for want of parties.—*Werdermann v. Société Générale D'Electricité*, 45 L.T. 514; 30 W.R. 33.
- (vi.) **C. A.**—*Discovery—Affidavit of Documents—Action against a Managing Owner of Ship.*—In an action for account against a managing owner of ships, he cannot protect himself against setting out books and documents relating to the ships' accounts in his affidavit of documents, on the ground that such documents and books are kept by a firm of which he is a member, and that the action is against him individually.—*Swanton v. Lishman*, 45 L.T. 360.
- (vii.) **Q. B. Div.**—*Discovery—Interrogatories—Contents of Documents.*—In an action for libel defendant was interrogated as to the contents of a letter alleged to have been written by her to a third person, and she swore that she had no recollection of the exact words in the letter contained: *Held* that she could not be called upon to state what was her recollection of the words she used.—*Dalrymple v. Leslie*, L.R. 8 Q.B.D. 5; 51 L.J. Q.B. 61; 45 L.T. 478; 30 W.R. 105.
- (viii.) **C. A.**—*Discovery—Interrogatories*—Ord. 31, rr. 5, 19.—Where defendant's answering an interrogatory cannot help plaintiff to obtain a decree, but will only be of use to him in case he does so, defendant will not be obliged to answer when such discovery would be oppressive. Plaintiff sought to obtain an answer to an interrogatory which, on defendant's appeal, was held to be too wide. The only order made was to discharge the order for further answer.—*Parker v. Wells*, L.R. 18 Ch.D. 477; 45 L.T. 517.
- (ix.) **C. A.**—*Discovery—Production of Documents—Marine Insurance*—Ord. 60 A., r. 12.—In an action by shipowners against underwriters on a policy: *Held* that the defendants were entitled to an order that plaintiffs and all persons interested in the proceedings and in the insurance should produce all ship's papers, &c., in their custody, possession, or power.—*China Transpacific Steamship Co. v. Commercial Union Insurance Co.*, 45 L.T. 647; 30 W.R. 324.

- (i.) **C. A.**—*Discovery—Production of Documents—Nominal Plaintiff.*—An action having been brought in the name of a nominal plaintiff, the real plaintiff being an underwriter, an order was made by consent that plaintiff should make an affidavit of documents in his possession. A further order was made at Chambers for the nominal plaintiff to put in a further affidavit: *Held* that the further affidavit could not be dispensed with on the grounds that the real plaintiff had done all he could to comply with the order, and that the nominal plaintiff would not give further discovery.—*Wilson v. Raffalovich*, L.R. 7 Q.B.D. 553.
- (ii.) **Ch. Div. V. C. H.**—*Infant Ward of Court—Payment into Court in Administration.*—Moneys were paid into Court in an administration action by the trustees of the will to the separate account of an infant, who was not a party to the action, and had never been served with the decree: *Held* that the infant was a ward of Court.—*Re De Pereda*, 30 W.R. 226.
- (iii.) **C. A.**—*Married Woman Plaintiff—Authority of Next Friend—Costs.*—Where an action was brought on behalf of a married woman by a next friend acting without authority, the Court ordered the action to be dismissed, and that the next friend's solicitors should pay the costs.—*Schjott v. Schjott*, 45 L.T. 333.
- (iv.) **C. A.**—*Parties—Alleged Fraud—Agent.*—In an action by a purchaser for rescission, alleging that he was induced to purchase by fraudulent mock bidding by the auctioneers; *Held* that the auctioneers were properly made defendants.—*Heatley v. Newton*, 45 L.T. 455; 30 W.R. 72.
- (v.) **Ch. Div. F. J.**—*Parties—Consolidation of Actions—Conduct of Cause.*—When two actions had been brought on the same day by different plaintiffs and had been consolidated; on the plaintiffs differing in opinion as to the conduct of the action; the plaintiff who first applied for a change of solicitors was made defendant and conduct of the action given to the other plaintiff.—*Holden v. Silkstone and Dodworth Coal Co.*, 45 L.T. 531; 30 W.R. 98.
- (vi.) **H. L.**—*Parties—Redemption—Trustee—Ord. 16, r. 7.*—In a redemption action a trustee sufficiently represents cestuis-que-trust interested in the equity of redemption.—*Jennings v. Jordun*, L.R. 6 App. 698; 45 L.T. 593.
- (vii.) **C. A.**—*Parties—15 & 16 Vict., c. 86, s. 44.*—In an action by an equitable mortgagee of a life policy against an insurance company for the policy moneys, the Court may dispense with the legal personal representative of the assured.—*Curtius v. Caledonian Insurance Co.*, 30 W.R. 125.
- (viii.) **Ch. Div. F. J.**—*Payment out of Court—Infant—Testamentary Guardian, 36 Geo. III., c. 52.*—A testamentary guardian is not entitled to obtain payment out of Court of funds belonging to his infant ward, which have been paid in under the Legacy Duty Act.—*Re Creswell*, 45 L.T. 468; 30 W.R. 244.
- (ix.) **C. A.**—*Pleading—Amendment—Ord. 27, r. 1.*—In an action to restrain defendant from committing certain acts upon a foreshore forming part of a settled estate, defendant pleaded that he had acquired an easement by prescription, and denied that plaintiff was entitled to the foreshore, "save subject to defendant's rights:" *Held* that defendant should be allowed to amend at the hearing, so as to raise the question of plaintiff's ownership, by striking out the words in inverted commas.—*Laird v. Briggs*, L.R. 19, Ch. D. 22; 45 L.T. 238.

- (i.) **Ch. Div. C. J.**—*Reference to Arbitration—Enforcing Award.*—Where an action has been referred to an arbitrator from the Chancery Division it is not necessary to make the award a rule of Court before an order can be made founded on it.—*Jones v. Wedgewood*, L.R. 19 Ch. D. 56; 30 W.R. 228.
- (ii.) **Ch. Div. V. C. H.**—*Security for Costs—Winding-up Petition—Liquidation of Petitioner.*—A person who had presented a petition to wind-up a company, filed a liquidation petition, but no trustee had been appointed: *Held* that he must give security for costs in the winding-up petition.—*Re Carta Para Gold Mining Co.*, 30 W.R. 117.
- (iii.) **Ch. Div. F. J.**—*Service of Pleadings—Substituted Service.*—The principle on which substituted service is directed is that the person substituted must either be authorised to receive service, or else be such a person as will certainly communicate the fact of service to the party himself.—*Slade v. Hume*, 45 L.T. 276; 30 W.R. 28.
- (iv.) **C. A.**—*Service out of Jurisdiction—Motion to Discharge—Ord. 11, r. 3.*—When plaintiff has obtained leave to serve a writ on a defendant out of the jurisdiction, the latter, on moving to discharge the order, may go into evidence to show that no cause of action has arisen within the jurisdiction.—*Fowler v. Barstow*, 45 L.T. 603; 30 W.R. 112.
- (v.) **Ch. Div. V. C. H.**—*Setting down for Trial—Infant Defendant—Ord. 19, r. 17; 36, r. 3.*—An action against several defendants, one of whom was an infant, was, when no defence had been put in, directed to be set down for trial on notice of trial against the infant, and on motion for judgment against the other defendants.—*National Provincial Bank v. Evans*, 30 W.R. 177.
- (vi.) **Ch. Div. V. C. H.**—*Varying Order—Error from Omission—Ord. 41. A.*—An order made on petition under the Settled Estates Act, 1877, which had been passed and entered, was directed to be varied so as to dispense with the consents of tenants for life to the exercise of leasing powers granted by the order. *Re Riley's Trusts*, 30 W.R. 78.
- (vii.) **C. A.**—*Writ of Summons—Time.*—A writ of summons in an action does not date back to the earliest hour of the day on which it is issued.—*Clarke v. Bradlaugh*, L.R. 8. Q.B.D. 63; 51 L.J. Q.B. 1; 30 W.R. 53.

Probate:—

- (viii.) **P. D. A. Div.**—*Attestation—Duplicate Will*—A will was written twice on different pieces of paper, the two copies varying slightly, but being to the same effect. One copy was signed by testator, and the other by the two witnesses: *Held* that the will was not duly executed.—*In the goods of Hutton*, L.R. 6 P.D. 204; 50 L.J. P.D.A. 78; 30 W.R. 62.
- (ix.) **P. D. A. Div.**—*Execution—Foreign Subject—24 & 25 Vict., c. 114; 33 & 34 Vict., c. 14, s. 2.*—A will of a foreigner executed abroad according to the formalities required by English law, is not entitled to probate in this country.—*In the goods of Von Buseck*, L.R. 6 P.D. 211; 30 W.R. 140.
- (x.) **Ch. Div. V. C. H.**—*Interlineation—Old Will—Probate of Consistory Court.*—Probate was granted by the Consistory Court in 1835 of a will which contained an interlineation affecting the disposition of realty therein: *Held* that the fact of probate having been granted raised a sufficient presumption, with absence of other evidence, that the interlineation was made before the execution of the will.—*Davey v. Lonsdell*, 45 L.T. 465; 30 W.R. 57.
- (xi.) **P. D. A. Div.**—*Jurisdiction—Married Woman's Will—Appointment of Realty*—The Judicature Acts have not enlarged the powers of the Probate Division in non-contentious business. A will by a married

woman disposing of realty under a power of appointment is not entitled to probate though containing an appointment of executors.—*In the goods of Tomlinson*, L.R. 6 P.D. 209; 50 L.J. P.D.A. 74; 30 W.R. 61.

- (i) **P. D. A. Div.**—*Renunciation of Executors*—*Administration with will Annexed*—*Residuary Gift*.—The only gift of residue contained in a will was "of such moneys, stocks, funds, or other securities not hereinafter specifically devised" as testator might die possessed of. The executors having renounced, administration with will annexed was granted to the next of kin, with a memorandum that the will contained no clear disposition of residue.—*In the goods of Aston*, L.R. 6 P.D. 203; 50 L.J. P.D.A. 77; 30 W.R. 92.

Public Health:—

- (ii) **C. A.**—*Local Board*—*Disqualification of Member*—*Penalty*—38 & 39 Vict., c. 55, sch. II., r. 64, 70.—*Held* that a member of a local board who, having been concerned in a contract by the board, has ceased to be a member under rule 64 of sch. II. of Public Health Act, 1875, is liable to a penalty of £50 under rule 70 if he afterwards acts as a member.—*Fletcher v. Hudson*, L.R. 7 Q.B.D. 611; 51 L.J. Q.B. 48.
- (iii) **Q. B. Div.**—*Paving Rate*—*Default of one of several Owners*—*Recovery*—*Delay*—38 & 39 Vict., c. 55, ss. 150, 257.—A local board gave a separate notice to each of several owners to sewer and pave the parts of a street in front of their premises. All the owners except appellant executed the works required, and the local board then executed the works required of appellant and gave her notice of her apportioned share of the expenses, requiring her to pay the amount: *Held* that the local board was not bound to give applicant a fresh notice specifying the works which remained for her to do, that as she had not given notice to dispute the apportionment it was binding on her after three months; that it was no objection to a summons to recover the amount that it was issued more than a year after the complaint on which it was founded, and that the notice of apportionment was not a notice of demand within sec. 257 of Public Health Act, 1875.—*Sincor v. Huddsworth Local Board*, L.R. 8 Q.B.D. 39.

Railway:—

- (iv) **Q. B. Div.**—*Carrier*—*Alternative Rates*—*Exemption from Liability for Detention*—17 & 18 Vict., c. 31, s. 7.—A railway company contracted to convey cattle for plaintiff from W. to G. at a reduced rate, on the terms that they were not to be liable in respect of loss, detention, or injury, except that arising from wilful misconduct. The carriage was prepaid, but this was not communicated to the company's servants at G., who refused to deliver the cattle to consignees, and in consequence they were detained for two days and injured by exposure: *Held*, that the company was liable.—*Gordon v. G. W. Rail. Co.*, L.R. 8, Q.B.D. 44; 51 L.J. Q.B. 58; 45 L.T. 509; 30 W.R. 230.
- (v) **Q. B. Div.**—*Carrier*—*Negligence*—*Damages*—*Remoteness*—12 Geo. IV. & 1 Will. IV., c. 68, s. 1.—Plaintiff delivered to defendant a trunk to be sent by rail from London to Liverpool and thence by steamer to Italy. By defendant's negligence the trunk was sent to the Victoria Docks and thence to New York, and plaintiff did not get it for a long time: *Held* that defendant was not deprived of the protection of the Carriers' Act by the fact that the loss was temporary; that the loss occurred during the transit of the trunk by land, and that plaintiff was entitled to recover as damages the cost of the repurchase of other articles in Italy, in place of those temporarily lost.—*Millen v. Branch*, L.R. 8 Q.B.D. 35; 45 L.T. 653.

- (i.) **Q. B. Div.—Passenger Tolls—Scale of Charges—8 Vict., c. 20, s. 95; 21 & 22 Vict., c. 75, s. 1.**—Held that defendant company was not prevented by sec. 95 of Railways Clauses Act, 1845, from demanding tolls for conveying passengers in the company's carriages over a part of the line where mile-stones were not maintained; that the provisions of a private Act, that the limit of the charge for third-class passengers should be one penny per mile, repealed the provisions of a former private Act enabling the company to charge a higher rate over a portion of the line; and that the provisions of sec. 1 of Cheap Trains Act, 1858, apply only to trains run in pursuance of the Act of 1844.—*Brown v. G. W. Rail. Co.*, 45 L.T. 471; 30 W.R. 214.
- (ii.) **Q. B. Div.—Railway Commissioners—Jurisdiction—Discretion as to Costs—36 & 37 Vict., c. 48, s. 28.**—The Railway Commissioners have power to make an order upon a successful defendant to pay a part of the costs of an application by an unsuccessful plaintiff.—*Foster v. G. W. Rail. Co.*, L.R. 8 Q.B.D. 25; 51 L.J. Q.B. 51; 45 L.T. 538.

Revenue:—

- (iii.) **Q. B. Div.—Income Tax—Coal Mine—Specific Cause—5 & 6 Vict., c. 35; 29 & 30 Vict., c. 36, s. 8.**—Coal mines were worked by appellants as an ordinary partnership till 1875, when they converted themselves into a limited company. The Income Tax Commissioners having assessed the income tax for 1876-7 on an average of the five preceding years: Held that appellants did not come within 5 & 6 Vict., c. 35, sch. A. 4, r. 6; nor sch. D., case 1, r. 1. But the commissioners having, in the case stated, found that the profits of the business had fallen short from the specific cause of the extraordinary depression in the coal trade: Held that appellants were within the proviso to sch. D., r. 4.—*Rhyhope Coal Co. v. Poyer*, L.R. 7 Q.B.D. 455; 45 L.T. 404; 30 W.R. 87.
- (iv.) **C. A.—Income Tax—Foreign Corporation—16 & 17 Vict., c. 34, s. 10.**—A foreign company had an agency in London which conducted a branch business and earned profits. The dividends of the company were payable at the option of shareholders abroad or in London. In a particular year the London agency earned an amount which enabled them to pay all dividends demanded of them in that year. They were assessed to income tax under schedule D. on the profits earned in England on an average of three years: Held that the money in their hands for the payment of dividends was intrusted to them within the meaning of 16 & 17 Vict., c. 34, s. 10, but that since they had paid income tax under schedule D. on their earnings they ought only to be further assessed in respect of that part of the dividends representing profits arising out of the United Kingdom.—*Gilbertson v. Fergusson*, L.R. 7 Q.B.D. 562.
- (v.) **C. A.—Inhabited House Duty—41 Vict., c. 15, s. 13.**—Part of a house was occupied by the owner for business purposes, part was occupied as a residence, and other parts were let and occupied for business purposes, and a care-taker and his wife resided in and attended to the house: Held that the parts occupied for business purposes were liable to inhabited house duty.—*Yorkshire Insurance Co. v. Clayton*, 30 W.R. 174.
- (vi.) **C. A.—Succession Duty—Trust for Settlor for Term of Years—16 & 17 Vict., c. 51.**—Held, reversing the decision of the Q. B. Div. (see vii., p. 14) that succession duty was payable on the whole value of the property.—*Attorney-General v. Noyes*, 45 L.T. 520.
- Scotland, Law of:—**
- (vii.) **H. L.—Power to Make Road over Public Land.**—Magistrates of a burgh held the links from time immemorial for behoof of the inhabitants and subject to the obligation of preserving them for the purposes of the

game of golf: Held on the evidence, that they were justified in making a road along the outside boundary of the links, but that they could not alienate any part of the *solum*, or create a public easement over it by dedicating it to the public.—*Paterson v. Provost of St Andrews*.—L.R. 6 App. 888.

- (i.) **H. L.**—*Roads and Bridges (Scotland) Act, 1878, ss. 4-7, 37*.—Held that the burgh of Aberdeen was included in the county of Aberdeen, for the purposes of sec. 7 of the Roads and Bridges Act; and that the trustees of a bridge connecting the counties of Kincardine (which had adopted the Act) and Aberdeen (which had not adopted it) were relieved from their liability for debts incurred under the local Acts constituting the bridge trusts, but that these local Acts continued in force so far as related to the powers and duties therein imposed on the trustees for the management and taking tolls in respect of the bridge within the latter county.—*Aberdeen Commissioners of Supply v. Morice*, L.R. 6 App. 881.

Settled Estates Act:—

- (ii.) **Ch. Div. V. C. H.**—*Petition to confirm Contract of Sale—Re-investment*—40 & 41 Vict., c. 18, s. 35.—On a petition under the Settled Estates Act for confirmation of a contract for sale, the Court directed the re-investment of the purchase-money in manner provided by sec. 34, without any further application.—*Re Hoare's Settled Estates*, 30 W.R. 177.

Settlement:—

- (iii.) **C. A.**—*Married Woman—Interest in Land*—3 & 4 Will. IV., c. 74, s. 77.—Personalty was settled on trust for A. for life with remainder to his two daughters who had attained twenty-one and married. The settlement contained no power to invest in real estate, but the trustees bought a freehold house with part of the fund. Afterwards the trustees, the daughters, by deed duly acknowledged, and their husbands, conveyed the house to such uses as A. should by deed or will appoint. On contract for sale by A.: Held that he could make a good title.—*Re Dufurant and Stoner*, L.R. 18 Ch. D. 105; 45 L.T. 363; 30 W.R. 37.
- (iv.) **Ch. Div. F. J.**—*Revocability—Volunteers*.—A gift conclusively made to a volunteer by means of a completed declaration of trust in his favour, is incapable of revocation by the donor.—*Paul v. Paul*, L.R. 19 Ch. D. 47; 51 L.J. Ch. 5; 45 L.T. 437.

Ship:—

- (v.) **C. A.**—*Abandonment—Cargo-Owner—Freight*.—When a ship is abandoned as a derelict and brought by salvors to an intermediate port, the ship-owner has so far abandoned his contract with the cargo-owner as to entitle the latter to treat the contract as abandoned should he elect to do so.—*The Cito*, 51 L.J. P.D.A. 1.
- (vi.) **P. D. A. Div.**—*Bottomry Bond—Communication with Owners—Foreign Ship*.—Communication, when possible, with the owners of a ship and cargo is necessary to the validity of a bottomry bond in this country, though, by the law of the ship's flag, non-communication does not invalidate the bond.—*The Gaetano e Muria*, L.R. 7 P.D. 1; 51 L.J. P.D.A. 7; 45 L.T. 510; 30 W.R. 108.
- (vii.) **P. D. A. Div.**—*Collision—Fog-horn*.—Where the mechanical fog-horn of a sailing ship breaks down and a mouth-horn is made use of, the vessel is not to blame for the departure from Art. XII. of Regulations for Preventing Collisions at Sea.—*The Chilian*, 45 L.T. 623.

- (i.) **P. D. A. Div.**—*Collision—Inevitable Accident*.—A ship in a gale drove from her anchors, and her rudder was so damaged that she became unmanageable, and in this condition she came into collision after sun-set with a brig at anchor. At the time she had only her anchor light exhibited: *Held* that the collision was caused by inevitable accident, and that she was not in fault.—*The Buckhurst*, L.R. 6 P.D. 152; 30 W.R. 232.
- (ii.) **C. A.**—*Collision—Limitation of Liability—Charge for Raising Sunken Ship*—40 & 41 Vict., c. 16, s. 4.—Decision of P. D. A. Div. (see iv., p. 16) affirmed.—*Prelm v. Bailey*, 45 L.T. 399.
- (iii.) **P. D. A. Div.**—*Collision—Limitation of Liability—Crew Space*—30 & 31 Vict., c. 124, s. 9.—When, at the time of a collision, the deduction for crew space under 30 & 31 Vict., c. 124, s. 9, has not been made from the registered tonnage, the owners cannot afterwards claim the benefit of such deduction in limiting their liability.—*The John McIntyre*, L.R. 6 P.D. 200; *The John Ormston*, 50 L.J. P.D.A. 76.
- (iv.) **C. A.**—*Implied Undertaking as to Fitness of Ship—Warranty*.—Plaintiff contracted with defendants for a lump sum to take a certain steam-tug of defendants towing two barges from H. to B., plaintiff to pay the crew and provide provisions for seventy days. The engines of the tug were damaged at the time of contract, but neither party knew this: *Held* reversing the decision of Coleridge, C.J. (45 L.T. 317) that there was no implied undertaking by defendants that the tug should be reasonably efficient for the purposes of the voyage.—*Robertson v. Amazon Tug Co.*, L.R. 7 Q.B.D. 598; 51 L.J. Q.B. 68.
- (v.) **Q. B. Div.**—*Insurance—Barratry—Warranty Against Capture and Seizure*.—When, in a marine insurance, the risks insured against include barratry of master or crew, and there is a warranty against capture and seizure; and, owing to a barratrous act of the master, the ship is seized by revenue officers, the insurance moneys are not recoverable.—*Cory v. Burr*, 30 W.R. 179.
- (vi.) **P. D. A. Div.**—*Salvage—Derelict—Abandonment by Salvors*.—The barque N. fell in with the K., a derelict, in the Atlantic, and put five hands on board of her, who navigated her three days. The K. then fell in with the B., and the hands on board the K. were, at their own request, taken on board the B., and the K. was ultimately brought into port by some of the crew of the B. assisted by another vessel: *Held* that the master, owners and crew of the N. were not entitled to salvage.—*The Killeena*, L.R. 6 P.D. 193; 45 L.T. 621.

Solicitor:—

- (vii.) **Q. B. Div.**—*Certificate—Country Solicitor Attending in London*—33 & 34 Vict., c. 97, s. 59.—A solicitor who has taken out a certificate not entitling him to practice within the ten mile limit from the General Post Office, does not practice or carry on business within such limit by merely transacting an isolated piece of business there.—*Re Horton*, 45 L.T. 541; 30 W.R. 102.
- (viii.) **Ch. Div. F. J.**—*Costs—Agreement in Writing*—33 & 34 Vict. c. 28, s. 4.—A document containing the terms of an agreement as to the amount of costs payable by a client to his solicitor, signed only by the client, is not an agreement in writing within sec. 4 of Attorneys and Solicitors Act, 1870.—*Re Raven*, 30 W.R. 134.
- (ix.) **Q. B. Div.**—*Costs—Non-Qualified Practitioner* 9 & 10 Vict., c. 96, s. 91; 37 & 38 Vict., c. 68, s. 12.—A person not qualified as a solicitor, who acts for parties in an action in the County Court, is not entitled to recover his expenses and fees from his client.—*Verlander v. Eddolls*, 51 L.J. Q.B. 355; 45 L.T. 543; 30 W.R. 104.

- (i.) **C. A.**—*Lien for Costs—Property Recovered or Preserved*—23 & 24 Vict., c. 127, s. 28.—*Held*, reversing the decision of Fry, J. (see ii., p. 17), that the solicitor was entitled to a charging order for his costs up to the time of the trustee's intervention.—*Emden v. Catts*, 45 L.T. 328; 30 W.R. 17.
 - (ii.) **C. A.**—*Money Received by Town Agent—Refusal to pay Client—Summary Jurisdiction.*—Decision of Q. B. Div. (see iii., p. 17), affirmed.—*Ex parte Edwards*, 45 L.T. 578.
 - (iii.) **Ch. Div. V. C. B.**—*Sale under Order of Court—Receipt of Deposit.*—On a sale of real estate under an order of the Court, it is the duty of the solicitors of the party having the conduct of the sale to receive the deposit money from the auctioneer, and pay it into Court.—*Biggs v. Bræ*, 45 L.T. 648; 30 W.R. 132.
 - (iv.) **C. A.**—*Solicitor and Client—Mortgage—Improper Sale—Damages—Costs.*—A solicitor took a mortgage from a client containing a power of sale without giving any notice, and afterwards sold under the power: *Held* that the *onus* lay upon him to show either that he had properly explained the nature of the mortgage, or had given the usual notice; and failing to prove this he was liable for damages to the extent of the costs caused by the sale, the costs of procuring a new investment of a similar nature by the client, and the increasing value of the property.—*Cockburn v. Edwards*, L.R. 18. Ch. D. 449; 51 L.J. Ch. 46; 45 L.T. 500.
- Trustee:—**
- (v.) **Ch. Div. F. J.**—*Investment—Indian Railway Stock.*—Under a trust empowering investment in the guaranteed stock of any railway company in India upon which a minimum rate of interest should be guaranteed by the Indian Government, the Court sanctioned investment in East India Railway Stock Annuity B., and in Scinde Punjaub and Delhi five per cent. guaranteed stock.—*Rhodes v. Jenkins*, 30 W.R. 133.
 - (vi.) **C. A.**—*Lunatic Trustee—Vesting Order*—13 & 14 Vict., c. 60, s. 5.—When one of several trustees of stock becomes a lunatic, the Court will make an order vesting the right to transfer in the co-trustees, without appointing a new trustee. It is unnecessary to entitle the petition in the Chancery Div. as well as in lunacy.—*Re Watson*, 45 L.T. 513.
 - (vii.) **Ch. Div. V. C. H.**—*New Trustee—Husband of Centui-que-trust.*—With the consent of a married woman interested under a will for her separate use, the Court appointed her husband one of two new trustees of the will, with a direction that if he should become sole trustee a new trustee should be appointed.—*Re Parrott*, 30 W.R. 97.
 - (viii.) **H. L.**—*Right to Indemnity—Severance of Funds.*—Testatrix gave £2,000 to trustees on trust for A. for life, remainder to A.'s children, and a like sum on trust for B. for life, remainder to B.'s children; and the trustees were empowered to realise or continue to hold the stocks and shares belonging to her at her death, and to lend or invest on such real or personal securities as they should consider advantageous. She died possessed of stock in an unlimited bank, and the trustees, at A.'s request, and without B.'s knowledge retained £200 of this stock as part of the fund appropriated to A. The bank became insolvent: *Held* that the trustees had severed the legacies, and therefore had no right to claim indemnity from B. for calls made on the bank stock.—*Fraser v. Murdoch*, L.R. 6. App. 855; *Robinson v. Murdoch*, 45 L.T. 417; 30 W.R. 162.

Vendor and Purchaser:—

- (i.) **H. L.**—*Conditions of Sale—Leaseholds—Continuing Breach of Covenant.*—Conditions of sale of leaseholds provided that the production of the last receipt of rent should be conclusive evidence of the performance of the covenants in the lease or waiver of any breaches. The lease contained a covenant not to carry on any trade on the premises without the licence of the lessors. Part of the property had been underlet to persons carrying on trade there, and the lessors with knowledge of this had continued to receive the rent: *Held* that the purchaser was bound to accept the title.—*Laurie v. Lees*, 30 W.R. 185.
- (ii.) **Ch. Div. K. J.**—*Conditions of Sale—Time for Requisitions—No Title.*—Conditions of sale provided that all requisitions and objections should be made within a certain time, time to be of the essence of the contract. After the expiration of the time the purchasers were allowed to insist on an objection that the vendors, who purported to sell under a power of sale, had no power to sell.—*Re Tunqueray-Willaume and Landau*, 45 L.T. 281.
- (iii.) **Ch. Div. K. J.**—*Covenant to Re-convey—Purchase from Railway Company.*—The deed conveying land purchased by P. from a railway company contained a covenant by P. to re-convey to the company whenever the land should be required for their works: *Held* that the covenant was binding on a purchaser from P. with notice.—*London and South-Western Rail. Co. v. Gomm*, 45 L.T. 505.
- (iv.) **Ch. Div. F. J.**—*Lease—Covenants—Evidence of Performance.*—A landlord refused to receive rent and brought an action for ejectment for breach of covenant to repair, but the action was stayed on default of delivery of particulars of breaches: *Held* that, as between the lessee and a purchaser from him, an affidavit by the lessee that to the best of his knowledge and belief the covenants had been performed, was *prima facie* evidence of such performance.—*Ringer to Thompson*, 51 L.J. Ch. 42; 45 L.T. 580.
- (v.) **C. J. B.**—*Payment of Purchase-Money by post-dated Cheque—Bankruptcy of Vendor—Notice.*—Purchasers paid part of the purchase-money by a post-dated cheque. Before the date of payment of the cheque they had notice that vendor was adjudicated bankrupt, but they did not stop payment of the cheque: *Held* that they must pay the money over again to the trustee.—*Ex parte Armistead, Re Palmer*, 45 L.T. 557; 30 W.R. 124.
- (vi.) **C. A.**—*Rescission—Misrepresentation—Fraud.*—In order to set aside a contract for false representation, it is not necessary to prove that the party who made the representation knew at the time that it was false, or that he made it recklessly. It is no defence to an action for rescission on the ground of fraud that plaintiff inquired to a certain extent whether the representation was true, but did it so inefficiently as not to discover the fraud.—*Redgrave v. Hurd*, 45 L.T. 485.
- (vii.) **C. A.**—*Specific Performance—Doubtful Title—Liquidating Debtor—Assignment of Chose in Action—Notice.*—A liquidating debtor, entitled to a reversionary interest in a legacy which had been paid into Court in an administration suit, assigned his interest to J. who obtained a stop-order, and afterwards he assigned his interest to E. who had no notice of the liquidation, and who obtained a stop-order. After this the trustee in liquidation obtained a stop-order. Plaintiffs purchased the interests of the trustee and J. and contracted to sell the legacy to defendant: *Held* that the question of priority of E.'s incumbrance was too doubtful to justify the vendor in omitting it from the abstract.—*Palmer v. Locke*, L.R. 18 Ch. D. 381; 45 L.T. 229.

- (i.) **C. A.**—*Statute of Frauds—Description of Property—Auction.*—At a sale by auction a memorandum was added to the conditions of sale and signed by auctioneer that the property, of which no description was given, was duly sold to plaintiff, and a receipt for deposit money, mentioning the amount of the purchase-money, was also then signed and given him. Posters describing the property had been published, but there were none in the room at the sale: *Held* a sufficient description of the thing sold to satisfy Statute of Frauds.—*Shardlow v. Cotterill*, 45 L.T. 572; 30 W.R. 143.

Voluntary Gift:—

- (ii.) **C. A.**—*Satisfaction—Double Portion.*—A father bound himself to pay his illegitimate son £10,000 on a certain day. A few weeks before that day he took his son into partnership, under articles providing that the capital should consist of £37,500, of which £19,000 should be considered as his son's: *Held*, affirming Fry, J. (45 L.T. 273), that the gift under the articles was a satisfaction of the gift under the bond.—*Laues v. Laues*, 45 L.T. 453; 30 W.R. 83.

Water:—

- (iii.) **H. L.**—*Lee Navigation—Towing-Path—Ownership.*—Conservators of a river navigation appointed under Acts of Parliament had full power to do what was necessary for carrying out the Acts, including powers to purchase land. They executed the powers of the Acts so far as related to the improvement of the navigation and the making of towing-paths: *Held* that, as there was no necessity to purchase the land forming the towing-paths in order to carry out the Acts, the burden of proof of such purchase lay on the conservators.—*Lee Conservancy Board v. Button*, L.R. 6 App. 685; 51 L.J. Ch. 17; 45 L.T. 385; 30 W.R. 233.
- (iv.) **Q. B. Div.**—*Waterworks Company—Supply for Public Purposes—Workhouse*—10 & 11 Vict., c. 17, s. 37-43.—By its special Act, which incorporated the Waterworks Clauses Act, 1847, a waterworks company was bound at the request of the owner of any house to supply water for domestic purposes at a minimum rate, to be increased if the house were occupied by more than one family, and it was provided that a supply for such purposes should not include a supply for baths, wash-houses, or public purposes: *Held* that a workhouse was a house of which the guardians were owners within the Act, that the company was bound to supply them with water for domestic purposes, and that the inmates of the workhouse constituted one family within the meaning of the Act.—*Liskeard Union v. Liskeard Waterworks Co.*, L.R. 7 Q.B.D. 505.
- (v.) **Q. B. Div.**—*Waterworks Company*—10 & 11 Vict., c. 17, s. 59.—Section 59 of Waterworks Clauses Act, 1847, does not include the case of a person improperly taking water from a tap in an unoccupied house.—*Piercy v. Pope*, 45 L.T. 477; 30 W.R. 60.

Will:—

- (vi.) **C. A.**—*Charity—Mortmain.*—By deed, A. covenanted with B. and C. to pay them within twelve months £20,000 to be held on trust to pay the income to W., wife of A., for life, then to A. for life and then upon such trusts as W. should by will appoint. By will of same date W. appointed the £20,000 to B. and C., her executors, on trust to pay certain legacies, and to pay the residue to such persons as W. should by deed-poll direct. By deed-poll of same date W. directed the trustees to pay the residue to certain persons to be elected as trustees for ever for certain charitable purposes: *Held* that the £20,000 was a debt due from A.'s estate and payable out of his general assets, and that the disposition by W. was not void. A gift of personality to be employed tem-

porarily in hiring rooms for the reception of poor persons is not contrary to the policy of the Mortmain Act.—*Emly v. Davidson*, 45 L.T. 418.

- (i.) **Ch. Div. K. J.**—*Construction—Benefit and Advancement in the World*.—A trustee had power to advance the capital of a fund "for the benefit and advancement in the world" of the life tenant: *Held* that the trustee could advance for such wide purposes as would come within the meaning of benefit.—*Coutes v. Brittlebank*, 30 W.R. 99.
- (ii.) **Ch. Div. F. J.**—*Construction—Annuity—Power of Appointment—Perpetuity—Residuary Gift of Personality—Lapsed Realty*.—A gift of an annuity to A. for life and then to B., gives B. only an annuity for life. A power of appointment is void when it is possible that the exact composition of the class among whom the appointment is to be made, may not be ascertained till after the period limited by the rule against perpetuities, though the extreme limit must be ascertained within the period. E. bequeathed to C. all her personal property except her wharf. By a subsequent part of the will she directed the wharf to be sold and made a specific disposition of the proceeds, which failed. The wharf was held by her in fee simple: *Held* that it passed under the residuary gift.—*Blight v. Hartnoll*, 45 L.T. 524.
- (iii.) **Ch. Div. K. J.**—*Construction—Charge of Debts—Devise to Executors*.—A direction by testator to his executors to pay his debts, and a devise to them of his real estate on trusts giving them unequal beneficial interests, does not amount to a charge of debts on the real estate.—*Re Tanqueray-Williams and Landau*, 45 L.T. 281.
- (iv.) **Ch. Div. M. R.**—*Construction—Gift to Children at Twenty-one—Executory Devise*.—Devise of freeholds to E. for life and after her death to such of her children living at her death as either before or after her death should attain twenty-one, and if no such children, then over: *Held* that such of E.'s children as had attained twenty-one at her death and survived her took vested interests, liable to open and let in such other children as were then infants on their attaining twenty-one.—*Re Lechmere and Lloyd*, L.R. 18 Ch. D. 524; 45 L.T. 531.
- (v.) **Ch. Div. V. C. H.**—*Construction—Gift to Class—Survivor*.—Testator gave property upon trust for his four children equally during their lives with remainder to their respective children at twenty-one, and directed that in the event of any of his children dying without having issue who should attain twenty-one, the share of the child so dying should go to the survivor or survivors of his children for their lives with remainder to their respective children. There was no gift over on death and failure of issue of all the children: *Held* that survivor or survivors could not be read other or others.—*Pomfret v. Graham*, 51 L.J. Ch. 43.
- (vi.) **C. A.**—*Construction—Gift to Class—Substitution—Remoteness*.—Testator directed his trustees after the death of the longest liver, of W. and M. and any widow whom W. might leave, to sell his real estate and hold the proceeds and the interim rents and profits upon trust to pay equally to all the children of W. and M. and the lawful issue of such of them as should be then dead having lawful issue, such issue to be entitled *per stirpes*: *Held* that this was a gift to all the children of W. and M. with a substitutional gift over on death leaving children before distribution, and that where such substitutional gift was void for remoteness the original gift remained unaffected.—*Goodier v. Johnson*, L.R. 18 Ch. D. 441; 45 L.T. 515.
- (vii.) **C. A.**—*Construction—Gift to Descendants who shall Bear Surnames—Remoteness*.—Bequest to trustees in trust for testatrix's brother R. for life, and after his death, for his son J. for life, and after death of R.

and J. upon trust for any immediate or direct descendants of R. or J. who should bear the name of R. for life; and from and after his or her decease in case of failure of any such immediate or direct descendants upon trust for certain charities, with a condition of forfeiture on abandoning the name of R.: *Held* that the gift to descendants included descendants who assumed the name of R., and was a gift to them as a class for life, and that the gift over to charities was not void for remoteness.—*Repington v. Roberts*, 45. L.T. 450. •

- (i.) **C. A.** — *Construction — Inconsistency.* — Testator bequeathed to his second wife an annuity of £150 in respect of each of her children for the time being under twenty-one, to commence after all four children by a former marriage should have attained twenty-one or died, to be paid half-yearly, the first payments to be made six months after testator's death: *Held* that the annuities did not begin till the four children had died or attained twenty-one.—*Bywater v. Clarke*, L.R. 18 Ch. D. 17; 30 W.R. 94.
- (ii.) **C. A.** — *Construction — Remoteness — Mistake — Annuity — Charge on Realty — Testamentary Expenses.* — It is a settled rule that, where the age is part of the description of the devisee, if the gift is to the devisee who shall attain that age, and the period of vesting is beyond the legal limit, the gift is void for remoteness. Testator bequeathed a bust upon A's. death to J. Duke of B., on certain conditions as to his retaining it. At the time of the will and of testator's death F. was duke of B., and he died in the life-time of A: *Held* that the bequest failed. Testator gave and bequeathed an annuity to E. for life, and charged it on certain farms, giving a power of distress and entry to the annuitant: *Held* that this was a devise of rent charge. A direction to executors to pay testamentary expenses includes the costs of an action to administer personality, but not those for administering real estate, which must be borne by the real estate.—*Patching v. Barnett*, 45 L.T. 292.
- (iii.) **Ch. Div. C. J.** — *Construction — Second Cousins.* — Testator gave property in trust to sell and divide equally amongst his second cousins. Testator never had any second cousins: *Held* that first cousins once removed took under the gift.—*Tucker v. Good*, 45 L.T. 470; 30 W.R. 58.
- (iv.) **Ch. Div. F. J.** — *Construction — Trusts Declared by Inference.* — Testator directed his trustees to hold £2,000 in trust for E. for life and after her death for her children, and also to hold £2,000 in trust for C. for life and after her death upon such and the like trusts as were declared of the £2,000 secured for benefit of E.: *Held* that on C.'s death her £2,000 went to her children.—*Bushford v. Chaplin*, 45 L.T. 246.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

FOR FEBRUARY, MARCH, AND APRIL, 1882.*

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration:—

- (i.) **C. A.**—*Cost of Suit—Intestacy as to Realty.*—Costs of administration, so far as they have been increased by the administration of real estate, are to be borne by the real estate.—*Thompson v. Harris*, 51 L.J. Ch. 273; 30 W.R. 293.
- (ii.) **Ch. Div. V. C. H.**—*Creditor's Action—Form of Judgment—Judicature Act, 1875, s. 10.*—In a creditor's administration action it is unnecessary to insert in the judgment a direction that if the estate shall prove insolvent the rules of bankruptcy are to apply.—*Woods v. Greenwell*, 45 L.T. 707; 30 W.R. 283.
- (iii.) **P. D. A. Div.**—*Insolvent Estate—Grant to Creditor*—20 & 21 Vict., c. 77, s. 73.—An executor at the time of his death was indebted to his testator's estate, and was also entitled, in right of his wife, to an equal amount from the estate. His executrix refused to take out administration to the wife's estate. A grant of administration to the wife's estate was made to a legatee of the testator.—*In the goods of Wensley*, L.R. 7 P.D.A. 13; 51 L.J. P.D.A. 21; 30 W.R. 431.

Agreements and Contracts:—

- (iv.) **Q. B. Div.**—*Breach of Contract—Measure of Damages.*—Grantees of lands, who had covenanted to erect a boundary wall between the land granted and other land of the grantors, failed to execute the covenant. In an action for damages for breach of covenant, it appeared that the injury to the value of the grantors' land was much less in amount than the cost of erecting the wall would have been: Held that the true measure of damages was the pecuniary loss to the grantors, and not the cost of erecting the wall.—*Wigsell v. School for Indigent Blind*, L.R. 8 Q.B.D. 357; 30 W.R. 474.
- (v.) **C. A.**—*Covenant not Running with Land—Assignment.*—Where land has been granted in fee in consideration of a rent charge and a covenant to build and repair buildings, the assignee of the grantee of the land is not

* Cases reported only in the *Law Times Reports* and *Weekly Reporter* for April 29th, are postponed till the August Digest.

liable to the assignee of the grantee of the rent charge, on the covenant to repair.—*Haywood v. Brunswick Permanent Building Society*, L.R. 8 Q.B.D. 403; 51 L.J. Q.B. 73; 45 L.T. 699; 30 W.R. 299.

- (i.) **C. A.—Privity of Contract—Assignment of Patent—Covenant.**—A patentee assigned letters patent to A. and B., who covenanted with him that they and their assigns would pay him certain royalties on all profits, and would render a yearly account of profits, with a proviso that after a sale of the patent had been made the patentee's interest should cease. The assignment was made to A. and B. with a view to form a company, and the company was afterwards formed and the patent made over to it: Held that the company was bound by the covenants in the assignment to A. and B.—*Werderman v. Société Générale d'Electricité*, L.R. 19 Ch. D. 246.

Arbitration:—

- (ii.) **Q. B. Div.—Award—Setting Aside—Umpire not Disinterested.**—R. the arbitrator appointed by respondents in an arbitration under the Lands Clauses Act, submitted three names to Y., claimant's arbitrator, to choose an umpire from, and Y. selected W. He discovered afterwards, but before going before the umpire, that W. was engaged in giving evidence on behalf of respondents about other property. After W. had made his award the claimant moved to set it aside on the ground that W. was not a disinterested party: Held that the objection was taken too late.—*Re Clout & Metropolitan Rail. Co.*, 46 L.T. 141.

Bankruptcy:—

- (iii.) **C. J. B.—Act of Bankruptcy—Fraud.**—The court of bankruptcy will not infer fraud from the mere suspicion that it may exist.—*Ex parte Jay, Re Morris*, 45 L.T. 797.
- (iv.) **Q. B. Div.—Action for Debt—Fraud—Declaration against Trustees in Bankruptcy.**—In an action against liquidating debtors and their trustee in liquidation for advances obtained by fraud, a declaration may be claimed against the trustee that plaintiff is entitled to prove for the amount of such advances, either against the debtors' joint or separate estates, as he may elect.—*Hals v. Houstead*, 51 L.J. Q.B. 255.
- (v.) **C. A.—Appeal from County Court—Time—Bankruptcy Rules, 1870, r. 144.**—An appeal from an order of a County Court was duly entered with the registrar of appeals, but a copy of the notice was not sent to the registrar of the Court appealed from till six days afterwards, during which interval the County Court was closed: Held reversing the decision of C. J. B. (46 L.T. 237; 30 W.R. 416) that the appeal was not out of time.—*Ex parte Williams, Re Jones*, 46 L.T. 242.
- (vi.) **C. J. B.—Appeal from County Court—Time.**—The registrar of a County Court did not receive notice of an appeal until three days after the time for appealing had elapsed: Held that the appeal was out of time.—*Ex parte Lyon, Re Lyon*, 45 L.T. 768.
- (vii.) **C. J. B.—Appeal—Deposit—Bankruptcy Rules, 1870, r. 145; 1878, r. 2.**—The time when the deposit on an appeal must be paid under rule 145, is not altered by rule 2 of Bankruptcy Rules, 1878.—*Ex parte Rosenthal, Re Dickinson*, 46 L.T. 320; 30 W.R. 492.
- (viii.) **C. A.—Auctioneer in Possession for Creditor—Sale after notice of Adverse Claim—Bankruptcy Act, 1869, s. 72.**—An auctioneer having gone into possession of goods of a liquidating debtor on behalf of the holder of a registered bill of sale was restrained by injunction from selling, and afterwards sold by direction of the trustee in liquidation: Held that the auctioneer had elected to sell the goods for the trustee, and therefore he must pay the money to the trustee.—*Ex parte Davies, Re Seiler*, L.R. 19 Ch. D. 86; 45 L.T. 633; 30 W.R. 237.

- (i.) **C. J. B.**—*Composition—Payment by Cheque.*—A debtor's creditors passed resolutions for a composition payable by instalments at different times, and appointed a trustee. When the first instalment became due, the debtor had placed a sufficient sum in the trustee's hands to meet it, and had sent cheques to the creditors for the amounts due to them: *Held* that a creditor who had not presented his cheque was not entitled to institute proceedings in bankruptcy against the debtor on the ground of the non-payment of his instalment.—*Es parte Ortelli, Re Sherratt*, 45 L.T. 799.
- (ii.) **C. A.**—*Evidence—Refusal to read Affidavit—Right to Cross-examine.*—In bankruptcy a party on whose behalf an affidavit has been filed cannot be compelled to read it; and unless he reads it, the opposite party has no right to cross-examine the deponent.—*Es parte Child, Re Ottawa*, 46 L.T. 118; 30 W.R. 282.
- (iii.) **C. J. B.**—*Evidence—Witness—Refusal to Answer—Tending to Criminate.*—A witness who is being examined under sec. 97 of Bankruptcy Act, 1869, is bound to answer any questions which in the opinion of the Court are legal and proper, and cannot have the effect of tending to criminate.—*Re Reynolds*, 46 L.T. 143.
- (iv.) **Q. B. Div.**—*Liquidation—Action by Trustees—Fraud—Set-off—Mutual Dealings.*—In an action by a trustee in liquidation for the price of shares sold by the debtor, defendant alleged that the sale was induced by fraudulent misrepresentation, and claimed damages for the fraud by way of counterclaim and set-off. *Held* that this claim was in respect of a mutual dealing within sec. 39 of Bankruptcy Act, 1869.—*Jack v. Kepping*, 46 L.T. 169; 30 W.R. 441.
- (v.) **Q. B. Div.**—*Liquidation—Execution for sum over £50—Abandonment of Part of Debt—Bankruptcy Act, s. 87.*—Where a creditor has obtained judgment for a sum exceeding £50, and issues execution, and subsequently receives notice of the presentation of a liquidation petition, he may, by abandoning part of his claim, and levying for less than £50, avoid the operation of sec. 87 of Bankruptcy Act, 1869.—*Turner v. Bridgett*, L.R. 8 Q.B.D. 392.
- (vi.) **C. A.**—*Liquidation—Joint and Separate Creditors—Transfer of Proceedings—Bankruptcy Act, 1869, s. 80.*—Decision of C. J. B. (sec. v., p. 23) affirmed.—*Es parte Horrocks, Re Wood*, L.R. 19 Ch. D. 367; 51 L.J. Ch. 261; 45 L.T. 692; 30 W.R. 298.
- (vii.) **C. J. B.**—*Liquidation—Payment of Debt after Petition—Bankruptcy Act, s. 94 (3).*—Three days after filing a liquidation petition, a debtor paid into a bank to the credit of the treasurer of a Board of Guardians £55, which he owed in respect of a call made on him as overseer for a contribution from the poor rates: *Held* that the payment into the bank was a dealing with the debtor within sec. 94, sub-sec. 3 of Bankruptcy Act, and was therefore protected.—*Es parte Atcham Guardians, Re Dickinson*, 46 L.T. 238.
- (viii.) **C. J. B.**—*Liquidation—Registration of Resolution—County Court Registrar.*—The registrar of a County Court to whom liquidation resolutions are presented for registration, must deal with an opposed proof himself, and cannot direct an issue to be tried before the judge and a jury.—*Es parte Williams, Re Bestenson*, 46 L.T. 241; 30 W.R. 491.
- (ix.) **C. J. B.**—*Liquidation—Resolutions—Power to strike Out.*—Where resolutions for liquidation by arrangement have been duly passed, the registrar has power to strike out any resolution which is *ultra vires*, and to register the others.—*Es parte Frampton, Re Watkins*, 45 L.T. 720.

- (i.) **C. J. B.**—*Liquidation Petition—Misdescription—Mala Fides*—The debtor presented a liquidation petition wherein he described himself as an engineer, and gave his private address. Down to a short time before presentation of the petition he had carried on business as an ironfounder at another address. There were no assets and resolutions for an immediate discharge were passed: *Held* that the resolutions ought not to be registered, as the description of the debtor was misleading, and the resolutions were not *bona fide*.—*Ex parte Kershaw, Re Woodhouse*, 45 L.T. 687.
- (ii.) **P. C.**—*Mutual Credits—Notice of act of Bankruptcy—Bankruptcy Act, s. 39.*—Where mutual credits are claimed under sec. 39 of Bankruptcy Act, 1869, the mutual account ought to be taken up to the time when the person claiming the benefit of the section has notice of an act of bankruptcy.—*Elliot v. Turquand*, L.R. 7 App. 79; 51 L.J. P.C. 1; 45 L.T. 771; 30 W.R. 477.
- (iii.) **C. A.**—*Proof—Debt founded on Felony.*—A bank allowed G. to overdraw upon his depositing certain bills as securities. It was afterwards discovered that the bills were forgeries; and at the request of G. and his family, the bank gave up the bills in exchange for promissory notes by G. and his relatives. G. became bankrupt: *Held* that the bank could prove for the amount of G.'s over-draft and interest.—*Ex parte Leslie, Re Guerrier*, 30 W.R. 344.
- (iv.) **C. A.**—*Sat-off—Unliquidated Damages—Action by Trustee—Bankruptcy Act, s. 39.*—In an action by a trustee in bankruptcy for a debt due under a contract made by defendant with the bankrupt, defendant can set off a claim for unliquidated damages arising out of a breach by the bankrupt of the same contract.—*Peat v. Jones*, L.R. 8 Q.B.D. 147; 51 L.J. Q.B. 128; 30 W.R. 433.
- (v.) **C. A.**—*Voluntary Settlement—Trader—Bankruptcy Act, 1869, s. 9.*—When a trader becomes bankrupt more than two, but within ten years after the execution of a voluntary settlement, which is impeached by the trustee in bankruptcy in order to establish its validity, it is necessary to prove that the debtor was, at the date of the settlement, able to pay his debts by means of assets readily available without the aid of the settled property.—*Ex parte Russell, Re Butterworth*, 46 L.T. 113.

Bill of Exchange:—

- (vi.) **Ch. Div. K. J.**—*Acceptance in Blank—Death of Acceptor.*—The drawer's name may be inserted in an acceptance in blank in a bill of exchange after the death of acceptor.—*Carter v. White*, 46 L.T. 236; 30 W.R. 466.
- (vii.) **Q. B. Div.**—*Cheque—Presentment.*—The rule of law as to bills of exchange and promissory notes, that an indorsee taking them after maturity takes them upon the credit of, and can stand in no better position than his endorser, does not apply to cheques.—*London & County Banking Co. v. Grooms*, L.R. 8 Q.B.D. 288; 51 L.J. Q.B. 224; 46 L.T. 60; 30 W.R. 382.
- (viii.) **C. A.**—*Promissory Note—Ambiguous Instrument—Stamp.*—Where the words in the body of a promissory note are ambiguous, the figures at the bottom of the note and the stamp may be looked at in construing them.—*Hutley v. Marshall*, 46 L.T. 166.

Bill of Sale:—

- (ix.) **Q. B. Div.**—*Attestation by Grantee's Solicitor—41 & 42 Vict., c. 31, s. 10 (1).*—The execution of a bill of sale may be attested by the solicitor to the grantee.—*Penwarden v. Roberts*, 46 L.T. 161; 30 W.R. 427.

- (i.) **C. A.**—*Consideration*—41 & 42 Vict., c. 31, s. 8.—If the amount of the expenses incident to the preparation of a bill of sale is deducted from the sum stated in it as the consideration, and the balance only actually paid by the lender to borrower, the consideration is not truly stated so as to satisfy sec. 8 of Bills of Sale Act, 1878.—*Ex parte Firth, Re Cowburn*, L.R. 19 Ch. D. 419; 46 L.T. 120.
- (ii.) **Ch. Div. F. J.**—*Unregistered Bill—Death of Grantor Insolvent—Judicature Act, 1875, s. 10.*—Section 10 of Judicature Act, 1875, does not effect the rights of a grantee of an unregistered bill of sale given by an insolvent deceased over the goods comprised in the bill of sale.—*Tadman v. D'Epineuil*, 30 W.R. 423.

Charity:—

- (iii.) **P. C.**—*Scheme—Endowed School*—32 & 33 Vict., c. 56; 36 & 37 Vict., c. 87.—It is no objection to a scheme of the Charity Commissioners under the Endowed Schools Acts, 1869, 1878, that the making of future schemes is contemplated therein. Vested legal rights only are protected by sec. 11 of Endowed Schools Act, 1869.—*Re Sutton Coldfield Grammar School*, L.R. 7 App. 91; 51 L.J. P.C. 8; 45 L.T. 631; 30 W.R. 341.

Club:—

- (iv.) **Ch. Div. K. J.**—*Expulsion of Member.*—The rules of a club empowered a majority of two-thirds of the Committee to expel any member whose conduct they deemed injurious to the character and interests of the club: *Held* on the facts of the case, that the Committee were justified in expelling plaintiff, and that the fact that one of the members who had voted for his expulsion was a person whom he had tried to exclude from the club, was no evidence that the Committee had acted maliciously.—*Lambert v. Addison*, 46 L.T. 20.
- (v.) **Q. B. Div.**—*Sale of Intoxicating Liquors*—35 & 36 Vict., c. 94, s. 3.—A club does not require to be licensed under the Licensing Act, 1872, to enable it to sell by retail intoxicating liquors to its members, whether to be consumed on or off the premises.—*Graff v. Evans*, L.R. 8 Q.B.D. 373; 51 L.J. M.C. 25; 30 W.R. 380.

Colonial Law:—

- (vi.) **P. C.**—*Law of Canada—Legislative Powers*—30 Vict., c. 3—*Canada Act, 22 Vict., c. 66—Quebec Act, 38 Vict., c. 64.*—*Held* that the Quebec Act, 38 Vict., c. 64, which assumed to repeal and amend the Canadian Act, 22 Vict., c. 66, was invalid; as the latter Act could only be repealed or modified by the Dominion Parliament.—*Dobie v. The Temporalities Board*, L.R. 7 App. 136; 46 L.T. 1.
- (vii.) **P. C.**—*Law of Canada*—30 Vict., c. 3, ss. 91, 92—*Dominion Act, 38 Vict., c. 20—Ontario Act, 39 Vict., c. 24.*—*Held* that the Ontario Act, 39 Vict., c. 24, is a valid Act and not inconsistent with secs. 91, 92 of British North America Act, 1867, or with Dominion Act, 38 Vict., c. 20. Effect of Ontario Act considered.—*Citizens Insurance Co. v. Parsons*, L.R. 7 App. 96; 51 L.J. P.C. 11; 45 L.T. 721.
- (viii.) **P. C.**—*Law of Malta—Construction of Deed.*—*Held*, on the construction of a deed creating a special *primogenitura*, that a deviation from the ordinary mode in which a *primogenitura* descends is not to be construed as interfering with that mode of descent more than is necessary to give effect to such deviation.—*Apap v. Strickland*, L.R. 7 App. 156.
- (ix.) **P. C.**—*Law of Mauritius—Sale of Ship by Licitation—Transfer*—17 & 18 Vict., c. 104, ss. 55, 56.—A sale by licitation in the Mauritius of a British ship, without a conveyance by bill of sale, does not create such an interest in the purchaser as to render it compulsory on the registrar under the Merchant Shipping Act, 1854, to register him as

owner, and the registrar may refuse to do so. A purchaser under a judicial sale of a beneficial interest in a British ship is not entitled to be registered as owner. There is no provision in the Merchant Shipping Acts authorising the registrar to erase entries of mortgages.—*Chastruneaf v. Capeyron*, L.R. 7 App. 127; 48 L.T. 65.

- (i.) **P. C.**—*Law of New Zealand—Will—Construction—Vesting.*—A testator, having made provision for his widow during her life or till marriage, directed that his trustees should from and after her death stand possessed of the residue of his property, in trust for his natural daughter for life, with remainders over: Held on the general effect of the will, that the natural daughter took a vested interest in all property not left to the widow immediately on testator's death.—*Rhodes v. Rhodes*, L.R. 7 App. 192.
- (ii.) **P. C.**—*Law of Nova Scotia—Transfer of Railways—Dominion Act*, 37 Vict., c. 16.—The Dominion Act, 37 Vict., c. 16, transferring the Windsor Branch of the Nova Scotia Railway to the appellant company, made such transfer subject to the rights of the respondent company in the branch, acquired under a previous agreement with the Dominion Government.—*Western Counties' Rail. Co. v. Windsor, &c., Rail Co.*, L.R. 7 App. 178.
- (iii.) **P. C.**—*Law of Straits Settlements—Evidence—Admissibility of Document—Stamp.*—Section 26 of Ordinance 8 of 1873, applies to all cases where a document has not been duly stamped, and for which a special provision in the ordinance has not been previously made, whether the defect arise from the insufficiency of the stamp or the want of proper cancellation.—*Vernon Allen v. Meera Pullay*, L.R. 7 App. 172.

Company:—

- (iv.) **Ch. Div. V. C. B.**—*Articles of Association—Lien on Shares—Debt of Joint Holder.*—B. and M. held shares jointly in plaintiff company. The articles of association provided that the company should have a paramount lien on the shares of a shareholder, whether held jointly or separately. M. and his partner S. went into liquidation, being indebted to plaintiffs: Held that plaintiffs were entitled to enforce their lien against the shares held by B. and M. in respect of the debt of M. and S.—*New London and Brazilian Bank v. Brocklebank*, 30 W.R. 422.
- (v.) **Ch. Div. C. J.**—*Foreign Life Assurance Company—Return of Deposit*—33 & 34 Vict., c. 61, s. 3.—On a petition under the Life Assurance Companies Acts, 1870-72, for payment out of the £20,000 required to be deposited in Court by a foreign life assurance company before commencing business in the United Kingdom, the Court may order the money to be paid to the depositors. The fund of £40,000 required to have been accumulated before the return of the deposit may consist of accumulations, already existing abroad, and arising from the foreign business of the company.—*Re Colonial Mutual Life Assurance Society*, 30 W.R. 458.
- (vi.) **C. A.**—*Winding-up—Appointment of Liquidator—Second Petition.*—An official liquidator ought not to be appointed at the hearing of a winding-up petition, but subsequently on reference to chambers. A creditor who presents a petition in ignorance of a prior petition is entitled to his costs up to the time when he has notice of the prior petition, and if he has good reason to suppose that the other petition is not a *bond fide* one, he is justified in proceeding with his own.—*Re General Financial Bank*, 46 L.T. 282; 30 W.R. 417.
- (vii.) **Q. B. Div.**—*Winding-up—Claim by Company for Goods Sold—Contract before Winding-up—Set-off.*—In an action by a limited company in the course of compulsory winding-up for the price of goods supplied to defendant by the company after, but in pursuance of a contract made

before the commencement of the winding-up, and not being a contract for the sale of specific goods, defendant cannot set-off a debt due from the company, incurred before the winding-up began.—*Ince Hall Rolling Mills Co. v. Douglas Forge Co.*, L.R. 8 Q.B.D. 179; 51 L.J. Q.B. 238; 30 W.R. 443.

- (i.) **Ch. Div. K. J.—Winding-up—Director—Misfeasance—Fraudulent Preference—Companies Act, 1862, ss. 164, 165.**—Three directors of a company borrowed money on behalf of the company, as they had power to do, and thereout repaid themselves advances made to meet debts of the company. They also paid up the uncalled portion of their shares, and with this money discharged directors' fees due to themselves. More than three months afterwards the company was ordered to be wound-up. It was alleged that the company was insolvent when the payments were made: *Held* that the official liquidator could not recover the sums paid by the directors to themselves, as being a fraudulent preference or a misfeasance within secs. 164, 165 of Companies Act, 1862.—*Re Liverpool and London Guarantee Insurance Co., Mason, Gallagher and Salter's Cases*, 46 L.T. 54; 30 W.R. 378.
- (ii.) **Ch. Div. V. C. H.—Winding-up—Examination of Witness—Companies Act, 1862, s. 115.**—Where a person is examined at the instance of the official liquidator of a company under sec. 115 of Companies Act, 1862, he is entitled to be attended by his counsel and solicitor, who may re-examine him so far as may be necessary to explain the evidence he has given. Notes of the proceedings may be taken and carried away for the purpose of the re-examination.—*Re Cambrian Mining Co.*, 51 L.J. Ch. 221; 30 W.R. 283.
- (iii.) **C. A.—Winding-up—Forfeiture of Lease—Summons for leave to Resume Possession—Companies Act, 1862, s. 163.**—A lease to a company reserved to the landlord liberty to re-enter on the company being wound-up: *Held* that the right to re-enter arose upon the commencement of the winding-up, and that on summons by the landlord in the winding-up, the Court was bound to order the liquidator to give up possession.—*Re Witley Brick & Pottery Co.*, 30 W.R. 445.
- (iv.) **C. A.—Winding-up—Impossibility of carrying on Business—Companies Act, 1862, s. 79 (5).**—When the Court is satisfied that there is no possibility of carrying on the business for which a company has been formed a winding-up order will be made, though the company is not insolvent, and against the wishes of the majority of the shareholders.—*Re Haven Gold-Mining Co.*, 51 L.J. Ch. 242; 30 W.R. 389.
- (v.) **C. A.—Winding-up—Judgment Creditor.**—A creditor of an insolvent company who has begun an action before, but obtained judgment after, a winding-up petition upon which an order is subsequently made, will, in the absence of special circumstances, be restrained from proceeding with his execution.—*Re Vron Colliery Co.*, 30 W.R. 388.
- (vi.) **C. A.—Winding-up—Life Assurance—Reduction of Contracts—33 & 34 Vict., c. 61, s. 22.**—Decision of V. C. H. (*see v.*, p. 25) affirmed.—*Re Great Britain Life Assurance Society*, 46 L.T. 73; 30 W.R. 374.
- (vii.) **Ch. Div. K. J.—Winding-up—Order on Default of Appearance—Discharge.**—An order was made for winding-up a company on a creditor's petition, neither the company nor any other creditors appearing. On motion by the company with petitioner's consent: *Held* that the order could be discharged, leave being reserved to all persons interested to apply.—*Re Aston Hall Coal Co.*, 45 L.T. 676; 30 W.R. 245.
- (viii.) **Ch. Div. K. J.—Winding-up—Rates—Apportionment—Public Health Act, 1875, s. 311 (3).**—Rates were assessed by the local authorities on property of a company in April for the next six months. In August the

company was wound-up and the liquidator continued in occupation of the premises: *Held* that the Court had no power to apportion the rates under sec. 211, sub-sec. 3 of Public Health Act, 1875, and that the whole amount must be proved for in the liquidation.—*Re Wearmouth Crown Gas Co.*, 45 L.T. 757; 30 W.R. 316.

- (i.) **C. A.**—*Winding-up—Unregistered Association—Companies Act, 1862, ss. 4, 199.*—*Held* that a mutual marine insurance company consisting of more than twenty members was formed to carry on a business, having for its object the acquisition of gain by the members, within the meaning of sec. 4 of Companies Act, 1862, and, not having been registered, could not be wound-up under sec. 199 of the Act.—*Re Padstow Total Loss Assurance Association*, 45 L.T. 774; 30 W.R. 326.

County Court:—

- (ii.) **Q. B. Div.**—*Transfer from Divisional Court.—Stay of Proceedings.*—30 & 31 Vict., c. 142, s. 10.—When an action brought in the Divisional Court has been transferred to a County Court under sec. 10 of 30 & 31 Vict., c. 142, the County Court judge has power to make an order staying proceedings until plaintiff has paid the costs of a previous action brought by him in the Divisional Court against same defendant.—*Regina v. Bailey*, L.R. 8 Q.B.D. 411; 51 L.J. Q.B. 244; 30 W.R. 522.

Crimes and Offences:—

- (iii.) **Q. B. Div.**—*Elementary Education—Attendance Order—Jurisdiction of Justices*—89 & 40 Vict., c. 79, ss. 12, 34—30 & 31 Vict., c. 106, s. 27.—Where a union extends into several counties, proceedings against parents within the union for non-compliance with attendance orders and bye-laws of School Attendance Committee of the union, may be taken before the justices of any county within the union.—*Regina v. Eaton*, L.R. 8 Q.B.D. 158; 51 L.J. M.C. 31; 30 W.R. 335.
- (iv.) **C. C. R.**—*False Pretence—Evidence of.*—Prisoner obtained money by representing that he was collecting information for a new county directory that W. and Co. were getting up, and that by paying one shilling prosecutor could have his name inserted in large type therein. W. and Co. were not getting up a directory and had not employed prisoner: *Held* that he was rightly convicted of obtaining money on false pretences.—*Regina v. Speed*, 46 L.T. 174.
- (v.) **Q. B. Div.**—*Malicious Injury to Property—Incorporeal Hereditament*—24 & 25 Vict., c. 97, s. 52.—The soil of a town moor was vested in the corporation of the town in fee, but freemen were entitled to the benefit of the herbage for two milch cows. Respondent having damaged the grass of the moor: *Held* that he could not be convicted under sec. 52 of Malicious Injury to Property Act, the right to herbage not being real or personal property within the section.—*Laws v. Eltringham*, L.R. 8 Q.B.D. 283; 51 L.J.M.C. 13; 46 L.T. 64; 30 W.R. 245.
- (vi.) **Q. B. Div.**—*Malicious Prosecution—Reasonable and Probable Cause.*—In an action for malicious prosecution for perjury, a direction to the jury that if they are of opinion that the plaintiff's statement was true, but that defendant, owing to a defective memory, entertained a reasonable and honest belief that plaintiff had sworn falsely, defendant would be entitled to their verdict, is right. Decision of Q. B. Div. (L.R. 8 Q.B.D. 167) affirmed.—*Hicks v. Faulkner*, 46 L.T. 127.
- (vii.) **C. C. R.**—*Manslaughter—Infant—Neglect to Supply Medical Aid.*—Where a parent neglects to supply medical aid for his child who is suffering from malignant disease, and the child dies, in order to convict the parent of manslaughter, it must be proved affirmatively that the death was caused by such neglect.—*Regina v. Morby*, 46 L.T. 283.

- (i.) **Q. B. Div.—Perjury—Information—Statements before Election Commission**—26 & 27 Vict., c. 29, s. 7.—By virtue of sec. 7 of Corrupt Practices Prevention Act, 1863, no statement made by any person in answer to a question put by or before commissioners appointed under the Corrupt Practices Acts, is admissible in evidence on an information for perjury.—*Regina v. Siator*, L.R. 8 Q.B.D. 267; 51 L.J. Q.B. 246; 30 W.R. 410.
- (ii.) **C. C. R.—Removal of Property with Intent to Defraud Creditors**—32 & 33 Vict., c. 62, s. 13 (3).—A judgment debtor removed his goods with the intent of defeating the execution creditor in satisfying his judgment: Held that this did not amount to an intent to defraud creditors within sec. 13, sub-sec. 3 of Debtors Act, 1839. Sec. 13 applies to all persons whether they have committed an act of bankruptcy or not.—*Regina v. Rowlands*, 46 L.T. 286; 30 W.R. 444.
- (iii.) **C. C. R.—Stealing at Common Law and under Statute—Pleading—Autrefois Acquit**.—Prisoners were acquitted on an indictment charging them with larceny at common law and with feloniously receiving "the goods aforesaid," on the ground that the alleged goods were fixtures: Held that this did not enable them to plead *autrefois acquit* to a subsequent indictment under 24 & 25 Vict., c. 96, s. 81, for stealing the fixtures.—*Regina v. O'Brien*, 46 L.T. 177.

Debtor and Creditor:—

- (iv.) **Ch. Div. F. J.—Fraudulent Conveyance**—13 Eliz., c. 5.—A. conveyed her farm and assigned her stock and household goods for the benefit of her two daughters, who covenanted to pay the farming debts and maintain A.: Held, on the facts, that this was not a fraudulent conveyance.—*Golden v. Gilham*, 51 L.J. Ch. 154; 46 L.T. 222.
- (v.) **Ch. Div. K. J.—Insolvency—Close of**—32 & 33 Vict., c. 83.—The effect of sec. 15 of 32 & 33 Vict., c. 83, is that an insolvency at the expiration of twenty years from the filing of the petition and of twelve months from the commencement of the Act, is absolutely closed, so that no proceedings can be taken to enforce a judgment entered up under the warrant of attorney given by an insolvent debtor before obtaining his discharge.—*Fordham v. Clagett*, 46 L.T. 26; 30 W.R. 467.
- (vi.) **Q. B. Div.—Purchase of Stolen Cattle—Market Overt—Claim for Expenses of Keep**.—The bona fide purchaser of stolen beasts sold in market overt cannot, on the claim of the owner for restitution after conviction of the thief, set up a counter-claim for the cost of their keep while the beasts were in his possession.—*Walker v. Mattheus*, L.R. 8 Q.B.D. 109; 51 L.J. Q.B. 243; 30 W.R. 338.

Easement:—

- (vii.) **Ch. Div. F. J.—Light—Interruption of Enjoyment—Onus of Proof**.—A plaintiff who alleges a twenty years' enjoyment of light must prove affirmatively a *prima facie* case of enjoyment, and defendant may displace this *prima facie* case either by proving a statutory interruption within the twenty years, or by showing by other evidence that plaintiff's evidence cannot be relied upon.—*Seddon v. Bank of Bolton*, L.R. 19 Ch. D. 462; 46 L.T. 226; 30 W.R. 362.
- (viii.) **Ch. Div. V. C. H.—Right of Support—Ancient Buildings—Ecclesiastical Corporation**—2 & 3 Will. IV., c. 71, s. 2.—Where ancient buildings belonging to different owners adjoin each other, there is a right of support from the building as well as the land; which right can be claimed under 2 & 3 Will. IV., c. 71; and the fact that the servient tenement belongs to an ecclesiastical corporation does not prevent the right from being acquired.—*Le Maître v. Davis*, L.R. 19 Ch. D. 281; 51 L.J. Ch. 178; 30 W.R. 360.

Ecclesiastical Law:—

- (i.) **Q. B. Div.—Church Rates—Rates under Local Act—31 & 32 Vict., c. 109, s. 5.**—By a Local Act in 1817 the hamlet of P. was taken from the parish of S., and formed into a separate parish; the inhabitants of P. were discharged from the payment of small tithes, and it was provided that the vestry of P. might make a rate upon occupiers of lands, &c., within the parish, such rate being applicable to ecclesiastical purposes: *Held* that a rate made under the authority of this Act could not be made compulsory, as it was not within the exception contained in sec. 5 of Church Rates Abolition Act, 1868.—*Watson v. Vestry of All Saints, Poplar*, 46 L.T. 201.
- (ii.) **Ch. Div. V. C. H.—Ecclesiastical Corporation—Rent Charge on Land of—Arrears—Right to Sell—12 & 13 Vict., c. 91.**—Owners of a rent charge created under 12 & 13 Vict., c. 91, upon lands of an ecclesiastical corporation, when the statutory remedy for recovery of arrears is not available, are entitled to sell so much of the inheritance as is necessary to raise the arrears. The Ecclesiastical Commissioners are not necessary parties to an action for this purpose.—*Scottish Widows' Fund v. Craig*, 30 W.R. 468.
- (iii.) **Ch. Div. V. C. H.—Union of Benefices—Evidence—Tithe Rent Charge.**—The parish church of K., a rectory, being in ruins in 1593, the parishioners of W., a perpetual curacy, entered into an agreement under which the parishioners of K. were admitted to use their church; and from 1605 downwards there was no separate presentation to the benefice of K.: *Held* that there had been no union of the benefices of K. and W., so that the holder of the benefice of W. could claim a tithe rent charge issuing out of lands in W.—*Attorney-General v. Earl of Durham*, 46 L.T. 16.

Election:—

- (iv.) **Q. B. Div.—Municipal Election—Corrupt Practices—Petition—Payment of Expenses—35 & 36 Vict., c. 60, s. 22.**—The Lords Commissioners of the Treasury having paid the amount of the remuneration of the barrister engaged in the trial of an election petition against the return of a borough councillor, required the borough treasurer to repay the amount out of the borough funds as required by sec. 22 of 35 & 36 Vict., c. 60. A rate was accordingly levied; but the commissioners, on hearing from the barrister that he intended to visit all the costs upon the councillor, cancelled their certificate, and the rate was returned to the ratepayers. Afterwards it appeared that the barrister had made no written order for payment of the costs under sec. 22, and the Commissioners issued a fresh certificate: *Held* that the Q. B. Div. could not amend the barrister's order; and that the Commissioners were entitled to a peremptory mandamus compelling the borough treasurer to pay them the amount they had paid.—*Regina v. Maidenhead Corporation*, L.R. 8 Q.B.D. 339; 51 L.J. Q.B. 209.
- (v.) **C. A.—Parliament—Borough Vote—Inhabitant Occupier—30 & 31 Vict., c. 103, s. 3; 41 & 42 Vict., c. 28, s. 5.**—In order to be entitled to the borough franchise as the occupier of a dwelling-house, the person must have an occupation in respect of which he can be rated to the relief of the poor, and he is therefore not so entitled by occupying part of a house as a lodger.—*Bradley v. Baylis*, L.R. 8 Q.B.D. 195; 51 L.J. Q.B. 189; 46 L.T. 253.
- (vi.) **C. A.—Parliament—Borough Vote—Lodger's Claim—41 & 42 Vict., c. 28, s. 23.**—Section 23 of Parliamentary and Municipal Registration Act, 1873, applies to lodger claimants claiming for the first time, as well as to lodgers already on the list of voters. *Decision of Q. B. Div.*

(45 L.T. 652) affirmed.—*Nuth v. Tamplin*, L.R. 8 Q.B.D. 247; 51 L.J. Q.B. 177; 30 W.R. 346.

- (i.) **Q. B. Div.**—*Parliament—County Vote—Borough Qualification*—2 Will. IV., c. 45, s. 24—41 & 42 Vict., c. 26, s. 28 (14).—Section 28, sub-sec. 14 of Parliamentary and Municipal Registration Act, 1878, has not in any way modified the effect of sec. 24 of 2 Will. IV., c. 45.—*Chilcott v. Bullen*, 46 L.T. 63.

Fishery:—

- (ii.) **Q. B. Div.**—*Fishery District—Tributory*—41 & 42 Vict., c. 39.—By certificate of the Secretary of State the Severn Fishery District was defined to be so much of the river Severn, and of the rivers V. and T., and of all other tributaries of the said river Severn as is situate within the counties of, &c.: Held that a tributary of a tributary of the Severn was not included in the district.—*Merricks v. Cadwallader*, 51 L.J. M.C. 20; 46 L.T. 29.

Friendly Society:—

- (iii.) **Q. B. Div.**—*Default of Subscriber—Default of Society*—38 & 39 Vict., c. 60, s. 30 (2).—C. subscribed for 11 weeks to a friendly society, by the rules of which a subscriber for 26 weeks was entitled to a half benefit. At the end of the 11 weeks C. ceased to subscribe, but no application was made to him on behalf of the society, and he subsequently died: Held that C. had not acquired a right to any benefit from the society.—*Taylor v. Collins*, 46 L.T. 168.
- (iv.) **C. J. B.**—*Treasurer—Liquidation—Proof—Preferential Debt*—38 & 39 Vict., c. 60, s. 15 (7).—The treasurer of a friendly society having in his hands monies of the society filed a liquidation petition: Held that the trustees of the society were entitled to have the amount due to the society paid in full in preference to other creditors.—*Ex parte Edmonds, Re Atkins*, 46 L.T. 240.

Highway:—

- (v.) **Q. B. Div.**—*Extraordinary Expenses—Recovery of—Time*—11 & 12 Vict., c. 43, s. 11—41 & 42 Vict., c. 77, s. 23, 36.—The six months period of limitation within which a complaint may be preferred to recover extraordinary expenses under sec. 23 of Highways and Locomotives (Amendment) Act, 1878, must be reckoned from the date of the surveyor's certificate.—*Pool Highway Board v. Gunning*, 46 L.T. 163.

Husband and Wife:—

- (vi.) **P. D. A. Div.**—*Divorce—Adultery—Desertion by Petitioner*.—A husband, without reasonable cause, obtained from his wife an agreement that they should live apart, which they accordingly did, and she subsequently committed adultery: Held, under the circumstances, that he had deserted her, and his petition for dissolution was dismissed.—*Dagg v. Dagg*, L.R. 7 P.D. 17; 30 W.R. 431.
- (vii.) **P. D. A. Div.**—*Divorce—Costs—Attachment of Debt—Judicature Act, 1873, s. 25 (8)*.—The Court has power to attach a debt in order to compel obedience to an order for the payment of costs in a divorce suit.—*Whittaker v. Whittaker*, L.R. 7 P.D. 15; 30 W.R. 431.
- (viii.) **P. D. A. Div.**—*Divorce—Unknown Co-Respondents*.—If a petition alleges adultery with persons unknown, the order of the Court must be obtained dispensing with making them co-respondents, though there are already other co-respondents who have been served with the same process.—*Penty v. Penty*, L.R. 7 P.D. 19; 51 L.J. P.D.A. 24; 30 W.R. 384.

- (i.) **P. D. A. Div.—Divorce—Variation of Settlements.**—A petitioner being in India, the Court allowed a petition for variation of settlements to be signed by his solicitor.—*Ross v. Ross*, L.R. 7 P.D. 20; 51 L.J. P.D.A. 22; 30 W.R. 384.
- (ii.) **P. D. A. Div.—Nullity—Impotence.**—After intermittent cohabitation for nearly three years, it appeared that the woman was impotent, but that she might be cured if she would submit to an operation involving no great risk of life; this she refused to do, and the Court granted a decree nisi of nullity of marriage.—*L. v. L.*, L.R. 7 P.D. 16; 51 L.J. P.D.A. 23; 30 W.R. 444.
- (iii.) **Ch. Div. F. J.—Separate Estate—Power to Charge.**—A married woman tenant for life without power of anticipation had power to direct trustees to do repairs and charge the estate. She employed a builder to do the repairs: *Held* that he was entitled to be paid by having the amount raised by charge on the estate.—*Skinner v. Todd*, 51 L.J. Ch. 198; 46 L.T. 131; 30 W.R. 267.
- (iv.) **Ch. Div. V. C. H.—Separate Estate—Restraint on Anticipation—Leave to bind Interest—Conveyancing Act, 1881, ss. 39, 69.**—An application to the Court to bind a married woman's interest in property as to which she is restrained from anticipation, must be made by summons in chambers.—*Re Lilwall's Trusts*, 30 W.R. 243.
- (v.) **Ch. Div. V. C. H.—Separate Estate—Restraint on Anticipation—Conveyancing Act, 1881, s. 39.**—Effect of sec. 39 of Conveyancing and Law of Property Act, 1881, observed upon.—*Tamplin v. Miller*, 30 W.R. 422.
- (vi.) **Ch. Div. F. J.—Separate Estate—Restraint on Anticipation—Conveyancing Act, 1881, s. 39.**—A married woman, who was very much in debt, was entitled to the income of a fund for her separate use for life, without power of anticipation, and with a general power of appointment over the remainder: *Held* that under the circumstances part of the fund might be paid out to her on her separate receipt.—*Hodges v. Hodges*, 30 W.R. 438.

Injunction:—

- (vii.) **C. A.—Trespass—Metropolis Management—Sewer—25 & 26 Vict., c 102, s. 69.**—Plaintiff was summoned before a magistrate under Metropolis Management Amendment Act, 1862, for diverting a watercourse which ran through his land, and which the vestry of the parish claimed to be a public sewer, and he was fined. He brought an action in the Chancery Division against the vestry, claiming an injunction to restrain them from entering on his land, and from taking proceedings against him in the police court: *Held* that the first injunction could not be granted, as it did not appear on the pleadings that the vestry intended to enter, and that the second injunction must also be refused.—*Stannard v. Vestry of St. Giles, Camberwell*, 46 L.T. 243.

Innkeeper:—

- (viii.) **Q. B. Div.—Liability for Loss of Guest's Property—Contributory Negligence.**—Where property of an innkeeper's guest was stolen from his room: *Held* that it cannot be laid down, as a proposition of law that leaving the door of the room unbolted at night is not evidence of negligence on the part of the guest, but that each case must depend upon its circumstances.—*Herbert v. Markwell*, 45 L.T. 649.

Justice of Peace:—

- (ix.) **Q. B. Div.—Disqualifying Interest—Town Councillor—Prosecution by Officer of Corporation.**—A magistrate who is a town councillor is not

thereby disqualified from having a summons taken out by an officer of the corporation against a ratepayer for non-payment of rates.—*Regina v. Handsley*, L.R. 8 Q.B.D. 383; 30 W.R. 368.

- (i.) **Q. B. Div.—Interested Justice—Bias.**—Where a justice who is appealing against his assessment to rates by the assessment committee in respect of his dwelling-house, takes part at special sessions in reducing the assessment of other appellants similarly situated, and on his leaving the bench the other magistrates reduce his assessment, the orders made are subject to bias and may be quashed on *certiorari*.—*Regina v. Great Yarmouth Justices*, 51 L.J. M.C. 39; 30 W.R. 460.

Landlord and Tenant:—

- (ii.) **C. A.—Lease—Common Rights—Inclosure—8 & 9 Vict., c. 118, ss. 69, 93, 94.**—T. was seized in fee of a farm with commonable rights attached, and these rights were extinguished under sec. 69 of Commons Inclosure Act, 1845, and T. sent in a claim for allotment in lieu thereof. T. having died the tenant for life under his will, demised the farm together with all commons, easements and appurtenances to W. for sixty years: *Held* that W. was not entitled either under the lease or the Inclosure Act, to an allotment made subsequently to the lease to T.'s successors in title to the farm.—*Williams v. Phillips*, L.R. 8 Q.B.D. 437; 51 L.J. Q.B. 102; 46 L.T. 184; 30 W.R. 354.
- (iii.) **Q. B. Div.—Lease—Covenant—Breach—Re-entry—Penal Rent.**—A lease contained a covenant by lessee against carrying on certain trades, and a proviso for re-entry on breach of any covenant, and the *reddendum* clause provided that if lessee should carry on a prohibited trade, he should pay an additional rent of £25 during the residue of the term: *Held* that this provision did not oust the landlord's right to re-enter on breach of covenant.—*Weston v. Managers of Metropolitan Asylum District*, L.R. 8 Q.B.D. 387; 46 L.T. 166; 30 W.R. 459.
- (iv.) **Q.B. Div.—Lease—Furnished House—Agreement as to Paying for Damage to.**—The lessee of a furnished house agreed in the event of breakage or damage to the house and furniture to make good and pay for the same; the amount of such payment, if in dispute, to be referred to and settled by two valuers or their umpire: *Held* that the lessor could not maintain an action for breakage until the sum payable for the same had been settled in the manner provided by the agreement.—*Babbage v. Coulburn*, 46 L.T. 283.
- (v.) **Ch. Div. K. J.—Lease—Reservation of Minerals—Surface Flints—Custom.**—Defendant was lessee of a farm from plaintiff under a lease reserving all mines, minerals, sand, quarries of stone, &c. Defendant was in the habit of selling flints found on the surface of the land, and it was the custom for tenants in the neighbourhood to do so: *Held* that the custom was good, and was not excluded by the reservation of minerals; and that the sale of the flints was not waste.—*Tucker v. Linger*, 46 L.T. 198; 30 W.R. 425.

Lands Clauses Act:—

- (vi.) **Q. B. Div.—Inquiry Under—Abortive—Costs—8 Vict., c. 18, s. 51.**—The costs of an inquiry payable by the promoters under sec. 51 of Lands Clauses Act, include costs of a previous abortive inquiry, and of the proceedings to set it aside.—*Regina v. North London Rail. Co.*, 51 L.J. Q.B. 241; *Regina v. Manley Smith*, 30 W.R. 272.
- (vii.) **Ch. Div. K. J.—Payment out of Court—Trustees with Power of Sale.**—Trustees with a power of sale are persons "absolutely entitled" within the meaning of sec. 69 of Lands Clauses Act, 1845.—*Re Thomas's Settlement*, 45 L.T. 746; 30 W.R. 244.

- (i.) **Ch. Div. K. J.**—*Superfluous Land—Sale to Another Company for Joint Purposes—Lands Clauses Act, 1845, s. 128.*—The M. Railway Company having purchased compulsorily certain lands, sold a part to the S. Company for the purposes of the joint undertaking of the two companies: *Held*, on the evidence, that the lands sold were not superfluous, and that the sale did not make them so, but was *ultra vires* and must be set aside.—*Hobbs v. Midland Rail. Co.*, 48 L.T. 270; 30 W.R. 516.

Limitations, Statutes of:—

- (ii.) **C. A.**—*Concealed Fraud—Absence of Means of Discovery.*—In an action for damages for fraudulent misrepresentation, a reply to a defence of the Statute of Limitations that plaintiff did not discover, and had no reasonable means of discovering the fraud until within six years before commencement of action, is good. Decision of Q. B. Div. (L.R. 8 Q.B.D. 294; 51 L.J. Q.B. 228; 46 L.T. 185; 30 W.R. 407) affirmed.—*Gibbs v. Guild*, 46 L.T. 248.
- (iii.) **Q. B. Div.**—*Land Required for Purposes of Railway—Lands Clauses Act, 1845, s. 127; 3 & 4 Will. IV., c. 27.*—*Held* that the mere fact that land which had been taken by a railway company was not superfluous land, did not prevent an occupier from acquiring a title as against the company under the Statute of Limitations, though he acquired title by the laches of the company's servants; but that under the circumstances of the case the plaintiff occupied only as licensee from the company, and had therefore not acquired a title.—*Bobbett v. South-Eastern Rail. Co.*, 51 L.J. Ch. 161; 46 L.T. 31.
- (iv.) **C. A.**—*Tenants in Common—Acknowledgment after Statutory Period—3 & 4 Will. IV., c. 27, s. 34.*—The title of A. and B., tenants in common of land, accrued in 1838. A. then took possession, and till 1864 never accounted to B. From 1864 to 1878 he accounted, and then he claimed to be entitled in severalty under 3 & 4 Will. IV., c. 27, s. 34: *Held* that B.'s title to the premises was not extinguished.—*Sanders v. Sanders*, L.R. 19 Ch. D. 378; 51 L.J. Ch. 276; 46 L.T. 637; 30 W.R. 280.

Lunacy:—

- (v.) **C. A.**—*Allowance to Committee—Power to Alienate.*—A committee of a lunatic's estate to whom an allowance has been directed to be made for certain purposes, has no right, legal or technical, to such allowance, and cannot alienate it.—*Re Weld*, 30 W.R. 385.
- (vi.) **C. A.**—*Allowance to Remainderman—Lunatic Tenant for Life.*—A lunatic aged 64 being entitled as tenant for life to an estate of the yearly value of £3,000 out of the income of which an allowance of £870 a year had been made by the Court for his maintenance, the Court granted an allowance of £500 a year to the tenant intail in remainder expectant on death of lunatic.—*Re Sparrow*, 30 W.R. 373.
- (vii.) **C. A.**—*Copyholds—Enfranchisement—Descent.*—The Court has no power to alter the legal descent of lands of a lunatic, but will, in a proper case, on sanctioning enfranchisement of a lunatic's copyholds, declare that the heirs-at-law shall stand possessed of the lands enfranchised in trust for the customary heir.—*Re Ryder*, 30 W.R. 417.
- (viii.) **C. A.**—*Person found Lunatic in Ireland—Jurisdiction—16 & 17 Vict., c. 70, ss. 41, 62.*—Though the Court in England has a discretionary power under sec. 52 of Lunacy Regulation Act, 1858, to act upon proceedings in lunacy taken in Ireland of which a transcript has been entered in England, this jurisdiction will not be exercised in order to rectify an alleged miscarriage of justice in Ireland.—*Re Talbot*, 45 L.T. 790; 30 W.R. 386.

Master and Servant:—

- (i.) **Q. B. Div.—Injury of Workman—Notice of Injury—43 & 44 Vict., c. 42, ss. 4, 7.**—The notice of injury required by sec. 4 of Employers' Liability Act, 1880, to be given, must be in writing.—*Moyle v. Jenkins*, L.R. 8 Q.B.D. 116; 51 L.J. Q.B. 112; 30 W.R. 324.

Mines:—

- (ii.) **H. L.—Agreement—Construction—Winning—Expenses—Profits.**—M. granted to T. a license to work mines under an estate, and first to repay himself out of the profits, the expenses incurred in the winning of the coal only, and then to pay M. a certain proportion of the profits: *Held* that T. was entitled to recoup himself all expenses of winning each separate seam of coal, and that interest at 5 per cent. should be allowed on the winning expenses.—*Elliot v. Lord Rokeby*, L.R. 7 App. 43; 51 L.J. Ch. 249; 45 L.T. 769; 30 W.R. 249.
- (iii.) **C. A.—Trespass—Wrongful Severance and Sale—Account.**—Defendant's servants without his knowledge trespassed on the adjoining mine of plaintiff, and took coal therefrom, which was brought to the mouth of defendant's pit: *Held* that in taking an account of the money to be paid by defendant for the coal, he was not entitled to deduct the cost of severing from the market value, but that he might deduct the cost of bringing the coal to bank.—*Joicey v. Dickinson*, 45 L.T. 643.

Mortgage:—

- (iv.) **Ch. Div. F. J.—Consolidation.**—An assignee or mortgagee of an equity of redemption takes subject to all the equities to which the assignor or mortgagor was subject at date of assignment, but free from any equities which would have arisen against the assignor or mortgagor at a subsequent date if he had not assigned or mortgaged.—*Harter v. Colman*, 46 L.T. 164; 30 W.R. 484.
- (v.) **C. A.—Foreclosure—Payment of Rent—Statute of Limitations—7 Will. IV., & 1 Vict., c. 28.**—*Held*, reversing the decision of Fry, J. (*see vi.*, p. 10), that payment of rent by the tenant of a mortgagor of part of the mortgaged property to the mortgagee is not sufficient to keep alive the mortgagee's right to foreclose as regards the whole property; though as regards the part in respect of which the rent is paid the mortgagee will be deemed to have entered into possession.—*Harlock v. Ashberry*, 30 W.R. 327.
- (vi.) **C. A.—Foreclosure—Sale—Conveyancing Act, 1881, s. 25 (2).**—The Court has power under sec. 25 of Conveyancing Act, 1881, to make an order for sale of mortgaged property at any time before the foreclosure is made absolute.—*Union Bank of London v. Ingram*, 30 W.R. 375.
- (vii.) **C. A.—Money Advanced for Investment—Memorandum—Right to Security.**—L. advanced £800 to his solicitor C. to be invested by the latter, and C. gave L. a memorandum stating that the money was in C.'s hands, at interest at 5 per cent., being part of a sum advanced to P. on security of freehold houses in K. In fact C. had advanced money to P. to enable him to buy houses in K. but no mortgage had been executed by P.: *Held* that L. was entitled to a charge in respect of the £800 on all C.'s interest in the houses bought by P.—*Burges v. Crowdy*, 46 L.T. 71.

Municipal Law:—

- (viii.) **Q. A.—Free Libraries Act, 1855, s. 6—Adoption by Resolution—Demanding Poll—40 & 41 Vict., c. 54—Decision of Q. B. Div. (*see v.*, p. 31) affirmed.**—*Regina v. Wimbledon Local Board*, 51 L.J. Q.B. 219; 46 L.T. 47; 30 W.R. 400.

- (i.) **Ch. Div. F. J.**—*New Street—Line of Buildings*—11 & 12 Vict., c. 63, s. 2—21 & 22 Vict., c. 98, s. 4—24 & 25 Vict., c. 61, s. 26—38 & 39 Vict., c. 55, ss. 156, 157.—“New streets” in Local Government Act, 1858, s. 84, and Public Health Act, 1875, s. 157, do not include highways which are already “streets” within Public Health Acts, 1848, s. 2, and 1875, s. 4. The prohibition against bringing forward any house or building forming part of any street beyond the front wall of the neighbouring houses contained in sec. 28 of Local Government Act, 1861, and sec. 156 of Public Health Act, 1875, applies only where there is a continuous line of buildings.—*Robinson v. Barton District Local Board*, 46 L.T. 193.
- (ii.) **Q. B. Div.**—*Rate—Rating Owner—Unoccupied Houses*—38 & 39 Vict., c. 57, s. 211.—Where owners of houses are rated instead of occupiers, under sec. 211 of Public Health Act, 1875, and such houses are made liable to the rate whether occupied or unoccupied, the assessment made on such houses must be made upon one-half only of their rateable value.—*Regina v. Barclay*, L.R. 8 Q.B.D. 806; 51 L.J. M.C. 27; 46 L.T. 102; 30 W.R. 472.

Partition :—

- (iii.) **Ch. Div. C. J.**—*Sale*—15 & 16 Vict., c. 55, s. 1.—Section 1 of Trustee Extension Act, 1852, applies to sales under the Partition Acts.—*Beckett v. Sutton*, 30 W.R. 490.

Partnership :—

- (iv.) **Ch. Div. K. J.**—*Death of Partner—Receiver—Deposit of Deeds by Surviving Partner—Charge*.—At the time of the death of one member of a firm of solicitors, the firm was indebted to R. for money given by her for the purpose of investment by the firm. The executors of the deceased partner brought a partnership action, and H., the surviving partner, was appointed one of two receivers. H., without the knowledge of his co-receiver, allowed R. to obtain possession of deeds forming part of the partnership property: *Held* that H. had no power to give R. a security upon the deeds for the money due to her, and that she must give them up to the receivers.—*Hills v. Reeves*, 30 W.R. 439.
- (v.) **Ch. Div. F. J.**—*Reference to Arbitration—Limited Time for—Receiver*.—By partnership articles it was agreed that any dispute should be referred to arbitration, so that such reference should be made within forty days next after the dispute. After various disputes had arisen on different matters at different times, one partner required the matter in dispute to be referred to arbitration: *Held* that as all matters in dispute could not be referred, the Court would refuse to stay an action by another partner involving the matters relating to which notice of arbitration had been given in time: *Held* also that an interim receiver and manager ought to be appointed, as the acting partner was not carrying on the business in the manner most beneficial for the partnership.—*Young v. Bucket*, 46 L.T. 266; 30 W.R. 511.

Patent :—

- (vi.) **O. A.**—*Allegation of Infringement—Slander of Title—Injunction*.—A patentee who issues notices against purchasing from a vendor, alleging infringements of his patent, is not bound to take legal proceedings to prevent the alleged infringements, and if he issues his notice *bond fide*, he is not liable to an action by the vendor for injury caused thereby, though he may be restrained by injunction from continuing to issue the notice.—*Halsey v. Brotherhood*, L.R. 19 Ch. D. 386; 51 L.J. Ch. 233; 45 L.T. 640; 30 W.R. 279.

- (i.) **Ch. Div. K. J.**—*Allegation of Infringement—Slander of Title—Injunction.*—In order to obtain an injunction restraining defendant from issuing notices to plaintiff's customers that plaintiff is infringing defendant's patent rights, plaintiff must show that defendant's statements are false.—*Burnett v. Tak*, 45 L.T. 748.
 - (ii.) **Ch. Div. C. J.**—*Allegation of Infringement—Slander of Title—Injunction.*—Similar decision to preceding.—*Anderson v. Liebig's Extract of Meat Co.*, 45 L.T. 757.
 - (iii.) **Ch. Div. V. C. B.**—*Prior user in Colony.*—A patent having been granted in England for an invention communicated from Natal: *Held* that prior user of the invention in Natal would not invalidate the English patent.—*Rolls v. Isaacs*, L.R. 19 Ch. D. 268; 51 L.J. Ch. 170; 45 L.T. 704; 30 W.R. 243.
 - (iv.) **C. A.**—*Specification—Novelty.*—The discoverer of a new principle or idea as regards any art or manufacture, who shows a mode of carrying it into practice, may patent the combination of principal and mode, though the idea or the mode of carrying it out would not alone be the proper subject of a patent.—*Otto v. Linford*, 46 L.T. 35.
- Poor Law :—**
- (v.) **Q. B. Div.**—*Bastardy—Maintenance Order—Power of Mother to Compound.*—An order for payment of a weekly sum having been made on the father of a bastard child, the mother agreed to take a sum down in lieu of weekly payment: *Held* that such agreement was no bar to the jurisdiction of the justices to enforce payment of arrears of the weekly payments.—*Griffiths v. Evans*, 30 W.R. 427.
 - (vi.) **Ch. Div. F. J.**—*District Medical Officer—Tenure of Office.*—Upon the construction of the Medical Appointments Order, 1857, the office of medical officer to a union is held *durante bene placito*.—*Donahoo v. Dodson*, 46 L.T. 300; 30 W.R. 334.
 - (vii.) **Q. B. Div.**—*Settlement—Parish—Union—39 & 40 Vict., c. 61, s. 34*—A person resided in the parish of S. for three years before the passing of 39 & 40 Vict., c. 61, so as to render him irremovable. He then left that parish and went to reside in the parish of M. in the same union, from which he continued irremovable down to the passing of the Act: *Held* that he had not acquired a settlement in S. under sec. 34 of the Act.—*Sunderland Union v. Clerk of Peace for Sussex*, L.R. 8 Q.B.D. 99; 51 L.J. M.C. 83; 46 L.T. 98; 30 W.R. 337.

Power of Appointment :—

- (viii.) **Ch. Div. F. J.**—*Limited Power—Deviation from.*—Testator had power, under a settlement, to appoint a fund by deed or will among his children: *Held* that a gift of residue among his children, in his will, which referred to and confirmed the settlement, was an exercise of the power, notwithstanding that he described the residue as the residue of 'my estate,' that he directed it to be converted, and his debts and legacies to be paid thereout, and that he had settled the shares of his daughters for the benefit of their respective husbands and children.—*Price v. Price*, 46 L.T. 228.
- (ix.) **Ch. Div. K. J.**—*Portions—Appointment of—Fraud on Power—Covenant for Quiet Enjoyment.*—A tenant for life of realty having power to charge portions for younger children, to be vested at such times as he should think fit, charged portions in favour of three daughters of tender ages, and directed the portions to be immediately vested, and to be payable subject to his life interest, at twenty-one or marriage. Two of the daughters died, and he assigned their portions, subject to his life

interest, to plaintiff for value, and covenanted for quiet enjoyment: *Held* that the appointment was void so far as it directed the portions to vest immediately, therefore that they did not descend to tenant for life; but that the purchaser could, under the covenant for quiet enjoyment, prove against the life tenant's estate for damages to the amount of his purchase-money.—*Henty v. Wrey*, L.R. 19 Ch. D. 492; 45 L.T. 752; 30 W.R. 317.

Practice :—

- (i.) **C. A.**—*Appeal for Costs—Trustee—Judicature Act, 1873, s. 49.*—A trustee defendant was deprived of his costs out of the trust estate on the ground of his misconduct: *Held* that an appeal by him as to costs only would lie.—*Turner v. Hancock*, 30 W.R. 480.
- (ii.) **Q. B. Div.**—*Appeal—Dismissal of Action—Extension of Time.*—An order was made dismissing an action unless a statement of claim was delivered within a certain time, and after the expiration of the time the statement of claim was delivered, and the day after defendant drew up and served the order for dismissal: *Held* that an order by a judge allowing the statement of claim to stand was rightly made, and that the proper course was to extend the time for appealing from the order of dismissal.—*Metcalfe v. British Tea Association*, 46 L.T. 31.
- (iii.) **C. A.**—*Appeal—Evidence—New Point.*—It is the duty of an appellant to bring before the Court of Appeal the whole of the evidence on which the order appealed from was founded; but the Court of Appeal has power, where a note of oral evidence has been accidentally lost, to allow that evidence to be taken again. An appellant will not be allowed to raise a new point in the Court of Appeal, where the respondent might have been able to rebut the evidence on which such point is raised, if it had been raised at the original hearing.—*Ex parte Firth, Re Cowburn*, L.R. 19 Ch. D. 419; 46 L.T. 120.
- (iv.) **C. A.**—*Appeal—Lapse of Time—Special Leave.*—A decree was made in an administration action in 1836, declaring the rights of parties in the remainder of settled property after the death of the tenant for life. Special leave to appeal on the grounds that the decree declared future rights, and that the declaration was wrong, was refused.—*Curtis v. Sheffield*, 46 L.T. 177.
- (v.) **C. A.**—*Appeal—Person entitled to.*—Leave to appeal from an order in an action will not be given to a person not a party, unless his interest is such that he might have been made a party by service.—*Craucour v. Salter*, 30 W.R. 329.
- (vi.) **C. A.**—*Appeal—Staying Execution pending—Appeal as to Amount of Damages.*—An application to stay execution will not be granted by the Court of Appeal in order to give a party, dissatisfied with the amount of damages assessed by a jury, an opportunity to decide whether he will appeal to the House of Lords.—*Webber v. London, Brighton & South Coast Rail. Co.*, 51 L.J. Q.B. 154.
- (vii.) **C. A.**—*Appeal—Time—Administration Action—Dismissal of Claim.*—An order in an administration action dismissing the claim of a creditor, not a party, who has come in under the decree, is a refusal order, and must be appealed from within twenty-one days, without waiting for the drawing-up of the chief clerk's certificate.—*Fordham v. Clagett*, 46 L.T. 70; 30 W.R. 374.
- (viii.) **C. A.**—*Appeal—Varying Minutes.*—Where the parties are unable to agree as to what are the proper minutes of a judgment of the Court of Appeal, the proper course is to move to vary the minutes.—*General Share and Trust Co. v. Witley Brick and Pottery Co.*, 46 L.T. 70.

- (i.) **C. A.**—*Certificate of Chief Cler'—Variation of.*—Decision of Fry, J. (*see vi.*, p. 33) affirmed.—*For v. Bearblock* (2), 46 L.T. 145; 80 W.R. 342.
- (ii.) **C. A.**—*Conduct of Proceedings—Administration—Bankruptcy of Administrator.*—H., the administrator of an estate, having brought an action for the administration of another estate, in which his testator was interested, became bankrupt. On the application of the plaintiff in the administration action previously against H., a receiver of the estate in the second action was appointed and leave given to plaintiff to prosecute the action in H.'s name.—*Dowl v. Hawtin*, L.R. 19 Ch. D. 61.
- (iii.) **C. A.**—*Contempt—Refusal to Commit—Appeal.*—Where a judge has refused to commit for disobedience of an order, because, on the construction he puts upon the order, there has been no contempt, an appeal will lie.—*Jarmain v. Chatterton*, 30 W.R. 461.
- (iv.) **C. A.**—*Costs—Reference by Consent*—30 & 31 Vict., c. 142, s. 2.—Matters in an action in a superior Court were referred by consent, the costs of the action and reference to abide the event; and the arbitrator found for plaintiff for a sum less than £20: Held that plaintiff was deprived of his costs of action by sec. 5 of County Courts Act, 1867.—*Fergusson v. Davison*, 46 L.T. 191; 30 W.R. 462.
- (v.) **C. A.**—*Costs—Third Party—Demurrer—Appeal—Judicature Act, 1873*, s. 24, 49—Ord. 16, r. 18; 55, r. 1.—In an action by landlord against tenant for breaches of covenant, H., a sub-tenant, was made a third party under Ord. 16, r. 18. Defendant having been ordered to pay plaintiff damages and costs, claimed them from H., who demurred to the claim for costs: Held that the demurrer was bad, and that the costs being in the discretion of the Court, no appeal could lie in respect of them.—*Hornby v. Cardwell*, L.R. 8 Q.B.D. 329; 51 L.J.Q.B. 89; 45 L.T. 781; 30 W.R. 263.
- (vi.) **C. A.**—*Discovery—Interrogatories.*—In an action seeking to restrain defendant from obstructing a public highway, defendant denied the fact of the public highway, and admitted signing an agreement to settle the action, but said that the agreement was obtained by misrepresentation and duress: Held that defendant was bound to answer interrogatories as to whether there had not been a public highway over the place in question for upwards of forty years, and also as to what was the conversation which took place on the occasion of the agreement.—*Attorney-General v. Gaskill*, 46 L.T. 180.
- (vii.) **P. D. A. Div.**—*Discovery—Particulars—Damage to Cargo of Ship.*—The Court will not, usually, order a plaintiff to give particulars of the alleged defective condition of the ship in an action for damage to cargo.—*The Rory*, 51 L.J. P.D.A. 22.
- (viii.) **C. A.**—*Discovery—Production of Documents.*—Where a judge of first instance in ordering production of documents directs them to be produced at a particular place, he is exercising a discretion with which the Court of Appeal will not interfere.—*Bustros v. Bustros*, 30 W.R. 374.
- (ix.) **C. A.**—*Evidence de bene esse—Old Suit.*—Evidence taken *de bene esse* in a suit instituted in 1815, and which had abated, by tenants of a manor on behalf of themselves and all other customary tenants, to establish certain rights: Held admissible in a suit instituted for a similar purpose in 1871 by other customary tenants of the same manor.—*Ilanover v. Homfray*, L.R. 19 Ch. D. 224.
- (x.) **Q. B. Div.**—*Married Woman—Judgment Against*—Ord. 14, r. 1.—Personal judgment cannot be signed against a married woman in an

action for the price of goods supplied to her during coverture. The debt and costs must be declared a charge on her separate estate.—*Durrant v. Ricketts*, L.R. 8 Q.B.D. 177; 30 W.R. 428.

- (i.) **Q. B. Div.**—*Married Woman Plaintiff—Plea of Non-joinder of Husband—Action on Foreign Judgment—Fraud.*—A statement that plaintiff at time of bringing the action was a married woman, is no defence, and may be demurred to. In an action on a foreign judgment, a defence that the judgment was obtained by a fraudulent misrepresentation to the foreign Court is good.—*Aboulloff v. Oppenheimer*, 80 W.R. 429.
- (ii.) **Q. B. Div.**—*New Trial.—Costs of Interlocutory Proceedings not Paid—Staying Proceedings.*—A new trial was ordered by the Court of Appeal, in an action in which plaintiff had obtained a verdict and substantial damages; and plaintiff was ordered to pay the costs of the application for a new trial. He did not pay the costs, and gave notice of trial: Held that the action ought not to be stayed until plaintiff had paid the costs.—*Morton v. Palmer*, 46 L.T. 285.
- (iii.) **C. A.**—*New Trial—Verdict Against Evidence.*—The granting of a new trial on the ground that the verdict was against the weight of evidence, must depend upon whether or not the verdict was such as reasonable men ought to have given, and not upon whether the judge who tried the action was dissatisfied or not with the verdict.—*Solomon v. Bitton*, L.R. 8 Q.B.D. 176.
- (iv.) **Ch. Div. V. C. H.**—*Parties—Death of Defendant—Action in Tort—3 & 4 Will. IV., c. 42, s. 2.*—Where defendant to an action founded on tort dies before the trial, and at a date later than six months after commencement of action, the further proceedings in the action cannot be carried on against his legal personal representatives.—*Kirk v. Todd*, 46 L.T. 192; 30 W.R. 436.
- (v.) **Q. B. Div.**—*Parties—Third Party—Ord. 16, rr. 18, 21.*—In an action against a shipowner for damages for injury of goods caused by the unseaworthiness of his vessel: Held that he was not entitled to bring in the shipbuilder as a third party under Ord. 16, rr. 18, 21.—*Blaina Iron Co. v. Garbutt*, 46 L.T. 162.
- (vi.) **Ch. Div. F. J.**—*Pleading—Admissions in Defence—Motion for Judgment after Reply—Ord. 40, r. 11.*—In an action for specific performance of an agreement, plaintiff, after reply, moved for judgment upon admissions in the defence: Held that he was not too late.—*Brown v. Pearson*, 30 W.R. 436.
- (vii.) **Q. B. Div.**—*Pleading—Counterclaim and Set-off in Reply—Ord. 19, rr. 3, 19; Ord. 20, r. 1.*—A plaintiff may, in his reply to a counterclaim of defendant, counterclaim in respect of a cause of action accrued after issue of writ, but arising out of the same transaction as defendant's counterclaim.—*Tuke v. Andrews*, L.R. 8 Q.B.D. 428.
- (viii.) **Ch. Div. F. J.**—*Pleading—Counterclaim—Third Party—Ord. 16, r. 17.*—A. gave a bill of sale over some goods to B., and afterwards another bill to C., who seized the goods; and B. sued C. for the return of the goods. C., by counterclaim, making A. a party, set up that his advance was obtained by the fraud of A. and B., and claimed a declaration that he was entitled to the goods, or, in the alternative, payment from A. of amount due and damages. At the trial C. abandoned his counterclaim as against B.: Held that the counterclaim against A. must be dismissed with costs.—*Barber v. Blaisberg*, L.R. 19 Ch. D. 473; 46 L.T. 52; 30 W. R. 362.

- (i.) **C. A.—Pleading—Demurrer—Ord. 28, r. 2.**—Where the equity of plaintiff's case is not obvious from his statement of claim, it is sufficient for defendant's demurrer to state, as the ground of law on which he relies, that the facts alleged do not show any cause of action to which effect can be given by the Court.—*Bidder v. M'Clean*, 46 L.T. 70.
- (ii.) **Ch. Div. K. J.—Pleading—Demurrer—Donatio Mortis Causa.**—In an action to enforce a *donatio mortis causa*, a statement of claim which alleges simply that a good and valid *donatio mortis causa* was made to plaintiff without stating the facts is demurrable.—*Townsend v. Parton*, 45 L.T. 755; 30 W.R. 287.
- (iii.) **Ch. Div. K. J.—Pleading—Recovery of Land—Ord. 17, r. 2.**—To claim to obtain quiet possession of land and an injunction to restrain from interfering with plaintiff's possession, is not joining with an action to recover land, a separate cause of action.—*Kendrick v. Roberts*, 46 L.T. 59; 30 W.R. 365.
- (iv.) **Ch. Div. K. J.—Reference—Accounts—Report—Judicature Act, 1873, s. 26.**—When a matter of account in an action has been referred to an official referee, the report should set out the items of the accounts as well as the result.—*Burrard v. Callisher*, 51 L.J. Ch. 223; 45 L.T. 793; 30 W.R. 321.
- (v.) **Ch. Div. K. J.—Reference—Confirmation of Report—Judicature Act, 1873, s. 56.**—At the trial of an action it was ordered that certain accounts should be taken by the official referee, the rest of the trial to stand over until the referee should have made his report. The report was made and filed: *Held* that a summons to confirm the report was not required before continuing the trial.—*Deacon v. Dolby*, 51 L.J. Ch. 248; 30 W.R. 317.
- (vi.) **Ch. Div. F. J.—Revivor for Appeal—Order forty-five years old.**—An order was made in an administration suit in 1836 which contained a declaration as to the reversionary and contingent interests in a fund after the death of the tenant for life. On the life tenant's death an order of revivor was granted to persons interested in disputing the declaration in the old order, with a view to their being in a position to ask leave to appeal.—*Curtis v. Sheffield*, 46 L.T. 80.
- (vii.) **Ch. Div. F. J.—Sale by Order of Court—Form of Order—Conveyancing Act, 1881, s. 5.**—In an administration action the Court will not, on further consideration, direct real estate to be sold under sec. 5 of Conveyancing Act, 1881, free from an annuity, but will refer the matter to Chambers.—*Patching v. Bull*, 46 L.T. 227; 30 W.R. 244.
- (viii.) **Ch. Div. V. C. H.—Service out of Jurisdiction—Leave for—Ord. 2, r. 4; 11, rr. 1, 3.**—Applications for leave to issue a writ for service out of jurisdiction, and for leave to serve out of the jurisdiction, should be made at Chambers, and may be made either simultaneously or separately. Evidence is only required upon the application for leave to serve.—*Stigand v. Stigand*, L.R. 19 Ch. D. 460; 30 W.R. 312.
- (ix.) **Ch. Div. F. J.—Trial—Right to Jury—Ord. 36, rr. 3, 26.**—In an action to restrain a nuisance, plaintiff moved for an injunction, and it was arranged that the motion should stand till the trial, with liberty to either party to apply to expedite the hearing: *Held* that defendant had not thereby lost his right to have the issues of fact tried before a judge and jury.—*Clarke v. Skipper*, 30 W.R. 465.
- (x.) **P. D. A. Div.—Writ—Defendant out of Jurisdiction—Ord. 2, rr. 3, 4.**—A writ *in personam* issued for service within the jurisdiction will not be set aside because defendant has been erroneously described therein as resident within the jurisdiction.—*The Helenslea*, 51 L.J. P.D.A. 16.

Principal and Agent:—

- (i.) **Ch. Div. V. C. H.**—*Advances by Broker to Agent—Antecedent Debt—Factors Acts—5 & 6 Vict., c. 39.*—A mere contingent liability on the part of brokers to their undisclosed principals in case of default by the purchaser of goods, does not constitute an antecedent debt due from the brokers to the principals, so as to invalidate an advance by the latter to the former upon security of bills of lading of goods intrusted to the brokers as agents for sale. Such advances are protected under 5 & 6 Vict., c. 39.—*Kaltenbach v. Lewis*, 45 L.T. 666; 30 W.R. 356.
- (ii.) **Ch. Div. V. C. H.**—*Contractor—Injury to Adjoining Property—Liability.*—Where A. employs a contractor to do certain works, which result in damage to B.'s property, both A. and the contractor are liable.—*Le Maître v. Davis*, L.R. 19 Ch. D. 281; 51 L.J. Ch. 173; 30 W.R. 360.

Probate:—

- (iii.) **P. D. A. Div.**—*Accidental Insertion of Word in Will.*—Where a word has been accidentally inserted in a will, and it can be shown that testator did not know that it was in the will at the time of the execution, the Court will strike it out.—*Morrell v. Morrell*, 30 W.R. 491.

Public Health:—

- (iv.) **C. A.**—*Local Authority—Sewer Constructed by—Obligation on Land-owner—Compensation—38 & 39 Vict., c. 55.*—The Public Health Act, 1875, imposes on landowners through whose land a sewer is carried under the powers of the Act, an obligation to preserve subjacent support for the sewer; and gives them a right to compensation for being deprived of the free power to work subjacent mines, but not for risk of percolation of sewage into such mines.—*Re Dudley Corporation*, L.R. 8 Q.B.D. 86; 51 L.J. Q.B. 121; 45 L.T. 733.
- (v.) **Q. B. Div.**—*Nuisance—Keeping Swine—38 & 39 Vict., c. 55, s. 47.*—It is an offence under sec. 47 of Public Health Act, 1875, to keep swine so as to cause a nuisance, though there may be no injury to health caused thereby.—*Banbury Sanitary Authority v. Page*, L.R. 8 Q.B.D. 97; 51 L.J. M.C. 21; 45 L.T. 759; 30 W.R. 415.

Railway:—

- (vi.) **Ch. Div. K. J.**—*Borrowing Powers—Ultra Vires—Fictitious Sale and Hiring—Sureties.*—A railway not having power to borrow, entered into an agreement with a waggon company by which they professed to sell their rolling-stock to the latter, and to hire it again at a fixed rent which would repay the purchase-money with interest in five years; and the directors of the railway company guaranteed the payment of the rent: *Held*, on the evidence, that the sale and hiring were in fact a borrowing and therefore illegal; that this was a defence available to an action to enforce the agreement; but that the sureties were liable under their guarantee.—*Yorkshire Railway Waggon Co. v. Maclean*, L.R. 19 Ch.D. 478; 51 L.J. Ch. 253; 45 L.T. 747; 30 W.R. 288.
- (vii.) **Q. B. Div.**—*Carriers—Liability—Value of Goods not Declared—11 Geo. IV. & 1 Will. IV., c. 68, s. 1.*—Plaintiff bought jewellery for less and sold it for more than £10, and he sent it by railway to the purchaser, without having declared its value: *Held* that the value of the jewellery exceeded £10 within the meaning of sec. 1 of 11 Geo. IV. & 1 Will. IV. c. 68.—*Blankensee v. L. & N. W. Rail. Co.*, 45 L.T. 761.
- (viii.) **Q. B. Div.**—*Passenger—Intent to Avoid Payment of Fare—Recovery of Penalty—8 Vict., c. 20, ss. 103, 145; 42 & 43 Vict., c. 49, ss. 6, 35.*—The penalty imposed by sec. 103 of Railways Clauses Act, 1845, is not a

sum of money claimed to be due and recoverable on complaint in a Court of summary jurisdiction within sec. 6 of Summary Jurisdiction Act, 1879; and is not subject to the procedure for the recovery of civil debts in a Court of summary jurisdiction prescribed by sec. 35 of that Act.—*Regina v. Paget*, L.R. 8 Q.B.D. 161; 51 L.J. M.C. 9; 45 L.T. 794; 30 W.R. 336.

- (i.) **C. A.—Railway Commissioners—Jurisdiction—Discretion as to Costs—**36 & 37 Vict., c. 48, s. 28.—Decision of Q. B. Div. (*see* ii., p. 38) reversed.—*Foster v. G. W. Rail. Co.*, 51 L.J. Q.B. 233; 46 L.T. 74; 30 W.R. 398.

Revenue:—

- (ii.) **C. A.—Income Tax—Foreign Telegraph Company—**16 & 17 Vict., c. 34, s. 2.—Held that a foreign telegraph company having marine cables in connection with the Post Office lines in England, and having offices in England for the transmission of messages, were chargeable with income tax on the balance of profits from their receipts in this country.—*Erichsen v. East*, L.R. 8 Q.B.D. 414; 51 L.J. Q.B. 86; 45 L.T. 703; 30 W.R. 301.
- (iii.) **C. A.—Income Tax—Revenue Applied to Specific Purpose.—**A docks and harbour board was directed by its statutes to apply receipts in certain specific ways, and such moneys were to be applied for no other purpose: Held that the board's revenue was liable to income tax.—*Mersey Docks, &c., Board v. Lucas*, 51 L.J. Q.B. 114.

Scotland, Law of:—

- (iv.) **H. L.—Appeal to House of Lords—Case from Sheriff's Court—Matter of Fact—Abandonment of Ship—**6 Geo. IV., c. 120, s. 40.—Held that the question as to whether or not underwriters had accepted the abandonment of a ship, was a matter of fact, and therefore that no appeal lay to the House of Lords under sec. 40 of 6 Geo. IV., c. 120, on a finding on such question in an action originating in the Sheriff's Court.—*Shepherd v. Henderson*, L.R. 7 App. 49.

Settled Estates Act:—

- (v.) **Ch. Div. K. J.—Proceedings for Protection of Estate—Costs of Tenant for Life—**40 & 41 Vict., c. 18, s. 17.—Trustees of settled estates are justified in paying costs incurred by tenant for life in proceedings to prevent the construction of a sewage farm so as to cause a nuisance to tenants of the estate, though the Court has not previously sanctioned such proceedings.—*Re Willan*, 45 L.T. 745; *Re Twyford Abbey Settled Estates*, 36 W.R. 268.
- (vi.) **Ch. Div. F. J.—Sale—Application of Purchase-Money in Repairs—**Part of proceeds of sale of settled estates, sold under the direction of the Court, was directed, on application under the Settled Estates Act, to be expended in embanking a river so as to protect another part of the same estate.—*Re Leadbitter*, 30 W.R. 378.
- (vii.) **Ch. Div. F. J.—Title of Petition—Married Woman's Interest—Conveyancing Act, 1881, s. 39.—**When, on petition under the Settled Estates Act, 1877, an order is made binding the interest of a married woman restrained from anticipation, the petition need not be entitled under the Conveyancing Act, 1881.—*Landfield v. Landfield*, 46 L.T. 227; 30 W.R. 377.

Settlement:—

- (viii.) **Ch. Div. K. J.—Construction—Marriage Portion—Failure of Trusts.—**By a settlement to which the bride's father was a party, it was recited that he had agreed to give a sum as marriage portion with his

daughter, to be held on the trusts of the settlement. The trusts, after the life estate of husband and wife, were void for remoteness. The husband and wife were both dead: *Held* that the money settled by the father went back to his estate.—*Re Nash's Settlement*, 46 L.T. 97; 30 W.R. 406.

- (i.) **Ch. Div. F. J.**—*Infant—Maintenance—Contingent Interest—Application by Summons.*—Property was left on trust to pay a certain sum out of the income for maintenance of an infant, to accumulate part of the income and thence to pay a legacy to the infant on his attaining twenty-one; and an application was made by summons to allow a further sum for the infant's maintenance out of the income directed to be accumulated: *Held* that the order could be made on summons, and that the infant's interest under the will ought to be held by the trustees as security to recoup the accumulations.—*Re Colgan*, L.R. 19 Ch. D. 305; 51 L.J. Ch. 180; 46 L.T. 152; 30 W.R. 266.
- (ii.) **C. A.**—*Power to Lease—Necessary Repairs.*—A settlement contained a power to the trustees to lease the property to any person who should improve or repair the same or covenant or agree to do so. The trustees agreed to let to a tenant, the lessee to do the necessary repairs: *Held* that the agreement to let was within the power.—*Truscott v. Diamond Rock Boring Co.*, 51 L.J. Ch. 259; 46 L.T. 7; 30 W.R. 277.

Ship :—

- (iii.) **P. D. A. Div.**—*Collision—Compulsory Pilotage—Suez Canal Regulations.*—The employment of a pilot in the Suez Canal though compulsory, is not of such a nature as to exempt owners of a ship from liability for damage done to another ship by the negligence of such pilot.—*The Guy Mannering*, 51 L.J. P.D.A. 17; 46 L.T. 110; 30 W.R. 523.
- (iv.) **P. D. A. Div.**—*Collision—Launch—Notice.*—A vessel lying at anchor in the river M. was warned that a launch was about to take place, and the owners of the launch took all usual precautions. The vessel at anchor failed to get out of the way, and was struck by the launch and sunk: *Held* that the vessel at anchor was alone to blame.—*The Cachapool*, 46 L.T. 171.
- (v.) **P. D. A. Div.**—*Collision—Overtaking Vessel.*—A vessel is not bound by Art. XI. of Regulations for Preventing Collisions at Sea to show from her stern a white or flare-up light to a vessel overtaking her unless there is ground to apprehend danger.—*The Reiher*, 45 L.T. 767.
- (vi.) **P. D. A. Div.**—*Collision—Overtaking Vessel.*—The provisions of Art. XI. of Regulations for Preventing Collisions at Sea that a ship being overtaken by another shall show a light from her stern, are not complied with where the only light a-stern is the binnacle light.—*The Broadbune*, 46 L.T. 204.
- (vii.) **P. D. A. Div.**—*Collision—River Tees Navigation—Maximum Speed.*—In Rule 22 of Rules for Navigation of River Tees, maximum speed means speed through the water and not over the ground.—*The R. L. Alston*, 46 L.T. 208.
- (viii.) **C. A.**—*Collision—Thames Conservancy Rules.*—Whether two steam-vessels proceeding in opposite directions in the River Thames are approaching one another so as to involve risk of collision, is, in all cases, a question of fact for the Court.—*The Odessa*, 46 L.T. 77.
- (ix.) **Q. B. Div.**—*Insurance—Freight—Beginning of Adventure.*—Plaintiffs effected an insurance on freight in the vessel H., at and from L. to B., beginning of adventure to be from the loading of the goods on board.

The vessel began loading at L., and a portion of the cargo which was in lighters alongside and about to be loaded was lost by perils of the sea: Held that plaintiffs could not recover under the policy.—*Hopper v. Wear Marine Insurance Co.*, 46 L.T. 107.

- (i.) **C. A.**—*Salvage—Appeal as to Amount*.—The Court of Appeal will alter an award of salvage by the Court below, where it appears that the Court below has not taken into account the fact that the rendering the salvage services was a deviation.—*The Farnley Hall*, 46 L.T. 216.
- (ii.) **P. D. A. Div.**—*Salvage—Jurisdiction of Justices—Merchant Shipping Act, 1854, ss. 458, 460*.—In order to give justices jurisdiction in respect of a salvage claim, there must be evidence that the vessel to which the services were rendered was used in navigation.—*The Mac*, 51 L.J. P.D.A. 20; 46 L.T. 206.

Solicitor:—

- (iii.) **C. A.**—*Costs—Taxation—Action by Third Parties—6 & 7 Vict., c. 73, s. 39*.—An action will not lie by a costui-que-trust against the solicitor of his trustees for taxation of a bill of costs paid by the trustees; the proper remedy being by application under sec. 39 of Solicitors' Act, 1843.—*Spencer v. Hart*, 51 L.J. Ch. 271; 45 L.T. 615; 30 W.R. 296.
- (iv.) **Ch. Div. C. J.**—*Costs—Taxation—Payment of Bill—6 & 7 Vict., c. 73, s. 41*.—A solicitor delivered to his client a bill of costs and a cash account showing a balance of £1 18s. 1d. in the client's favour; and on his applying for the balance he was paid only £1 16s. by mistake: Held that there had been no payment of the bill, and that the client was entitled to the common order for taxation.—*Re Angore*, 46 L.T. 280.
- (v.) **Ch. Div. C. J.**—*Lien for Costs—Payment into Court*.—Where an adequate reason is shown, the Court will order a discharged solicitor to deliver up documents on which he claims a lien for costs, on the client's paying into Court a sum sufficient to satisfy the solicitor's demand.—*Re South Essex Investment Co.*, 46 L.T. 280.
- (vi.) **Ch. Div. F. J.**—*Lien for Costs—Policy of Assurance—Notice*.—A solicitor's lien on a policy of assurance is not lost by want of notice to the obligee, as against assignees who give notice.—*West of England Bank v. Batchelor*, 51 L.J. Ch. 199; 46 L.T. 132; 30 W.R. 364.
- (vii.) **C. A.**—*Sale under Order of Court—Receipt of Deposit*.—Decision of V. C. B. (*see* iii., p. 41) affirmed.—*Biggs v. Bree*, 51 L.J. Ch. 263; 46 L.T. 8; 30 W.R. 278.
- (viii.) **Ch. Div. V. C. H.**—*Undertaking by—Personal Liability—Summary Jurisdiction*.—A solicitor for defendant in an action gave plaintiff's solicitors an undertaking in writing expressed to be on behalf of his firm, agreeing to pay a fixed sum for costs due from defendant to plaintiff: Held that the Court would compel the solicitor's firm to pay the amount, together with costs of motion to enforce undertaking.—*Re Woodfin and Wray*, 30 W.R. 422.
- (ix.) **Q. B. Div.**—*Unqualified Person—6 & 7 Vict., c. 73, s. 2*.—An unqualified person who acts as a solicitor commits an offence against 6 & 7 Vict., c. 73, s. 2 though he acts in the name and with the assent of a duly qualified solicitor.—*Abercrombie v. Jordan*, L.R. 8 Q.B.D. 187.
- (x.) **C. A.**—*Unqualified Person—Proceedings in Probate Court—Penalty—23 & 24 Vict., c. 127, s. 26*.—Law stationers were in the habit, at the request of solicitors, of leaving the documents necessary for obtaining probates at the Probate Registry, and calling again for them and taking the grant of probate. They charged the solicitors only a messenger's fee for the time occupied in attending at the Registry: Held that they

were not liable to the penalty imposed by sec. 26 of 23 & 24 Vict., c. 127.
—*Law Society v. Shaw & Waterlow*, 51 L.J. Q.B. 249; 46 L.T. 187.

- (i.) **Q. B. Div.**—*Unqualified Person—Attachment*—6 & 7 Vict., c. 73, s. 2; 23 & 24 Vict., c. 127, s. 26.—An accountant issued a writ on behalf of a creditor, which purported to be issued by S., a solicitor, but which in fact was issued without S.'s authority: *Held*, under the circumstances, that there was not sufficient evidence to show that the accountant had put himself forward as acting as a solicitor to justify his committal for contempt.—*Dockings v. Vickery, Re Symons*, 46 L.T. 139.

Trade Mark :—

- (ii.) **H. L.**—*Infringement*.—Decision of Court of Appeal (L.R. 13 Ch. D. 434; 42 L.T. 67; 28 W.R. 330) affirmed on the facts.—*Johnston v. Orr Ewing*, 46 L.T. 216; 30 W.R. 417.

Trustee :—

- (iii.) **C. A.**—*Breach of Trust—Acquiescence—Laches*.—A cestui-que-trust who, knowing that his trustee has committed a breach of trust, obtains from him only a part of that to which he is entitled, does not thereby waive his right to such further relief as he may be able to obtain, unless there is something in the surrounding circumstances from which an intention to do so can be clearly inferred.—*Harston v. Tenison*, 45 L.T. 777; 30 W.R. 313; 376.
- (iv.) **C. A.**—*Breach of Trust—Liability—Shares in Company—New Shares*.—*Held*, reversing the decision of Fry J. (see vi., p. 17), that the trustee was only liable to make good the value of the shares less the amount paid for calls.—*Briggs v. Massey*, 30 W.R. 325.
- (v.) **C. A.**—*Covenant with Third Party—Obligation to Enforce—Deravit*.—C. and P. were appointed trustees under a marriage settlement by which husband covenanted to pay six months after his death, £500 to be held on trusts for wife and children. At the same time they had notice of the existence of a subsequent separation deed whereby S. covenanted to pay £500 immediately in substitution for the £500 payable under the first deed. C. and P. were S.'s executors, and paid the interest on the £500 to the person entitled under the settlement, but never transferred the £500. The husband died, and shortly afterwards the whole of S.'s estate was lost: *Held* that C. and P. were liable for the loss of the £500 covenanted to be paid by S.—*Collins v. Rhodes*, 45 L.T. 658.
- (vi.) **Ch. Div. K. J.**—*Injunction Against—New Trustees Appointed—Breach—Committal*.—An injunction was granted against trustees of a friendly society restraining them from distributing a fund. Shortly afterwards new trustees were appointed in their place, who proceeded to distribute the fund: *Held* that both the old and new trustees had been guilty of a contempt of Court, and must be committed to prison and pay the costs of the motion to commit.—*Arory v. Andrews*, 46 L.T. 279.
- (vii.) **Ch. Div. K. J.**—*New Trustee—Appointment of—Conveyancing Act, 1881, s. 31*.—When the power of appointing new trustees given by sec. 31 of Conveyancing Act, 1881, can be exercised, application should not be made to the Court.—*Re Gibbons's Trusts*, 45 L.T. 756; 30 W.R. 287.

Vendor and Purchaser :—

- (viii.) **C. A.**—*Conditions of Sale—Possessory Title only—Forfeiture of Deposit*.—Defendant purchased from a railway company land over a tunnel which the company had no power to sell, and plaintiff contracted to buy the land from defendant as freehold building land. The conditions of sale were that the title should commence with conveyance from the

company, that purchaser should make no objection or requisition in respect of such conveyance, and that he should send in any objections to title within seven days from delivery of abstract. Plaintiff declined to complete after the expiration of the seven days, and sued for his deposit: Held that he could not recover.—*Rosenberg v. Cook*, L.R. 8 Q.B.D. 162; 51 L.J. Q.B. 170; 30 W.R. 344.

- (i.) **Ch. Div. F. J.**—*Conveyance—Construction—General Words.*—The parcels in a conveyance were described by reference to coloured parts of a plan. A yard delineated but not coloured on the plan, was held to pass under the general word "yards."—*Willis v. Watney*, 51 L.J. Ch. 181; 45 L.T. 739; 30 W.R. 424.
- (ii.) **C. A.**—*Payment of Purchase-money by post-dated Cheque.—Bankruptcy of Vendor—Notice.*—Decision of C. J. B. (*see v.*, p. 42) reversed.—*Ex parte Richtale, Re Palmer*, L.R. 19 Ch. D. 409; 46 L.T. 116; 30 W.R. 262.
- (iii.) **Ch. Div. K. J.**—*Specific Performance—Mistake—Particulars of Sale.*—In an action by vendor for specific performance: Held that purchaser was not entitled to resist specific performance on any of the following grounds: (i.) that the particulars of sale described part of the property as let to weekly tenants, and producing £74 a year; when at the time the particulars were issued it was let at a lower rent, which was before the sale raised to the amount stated; (ii.) that the term for which another part of the property was let was stated to be longer than it actually was; (iii.) that a first edition of the particulars of sale omitted to mention a mortgage on the property, but it was mentioned in a second edition, which defendant had not read, and also mentioned by the auctioneer at time of sale.—*Goddard v. Jeffreys*, 51 L.J. Ch. 57; 45 L.T. 674; 30 W.R. 269.
- (iv.) **Ch. Div. F. J.**—*Vendor's Lien—Notice—Register County.*—For the retention of a vendor's lien on land in the West Riding of Yorkshire against subsequent purchasers, it is not necessary that any written evidence of the lien should be taken and registered. Purchasers of small plots who had employed as agents their vendors to manage the business: Held affected with notice of lien for money owing by such vendors; but purchasers who only employed the vendors to procure the preparation of the conveyance; held not so affected.—*Kettlewell v. Watson*, 51 L.J. Ch. 281; 46 L.T. 83; 30 W.R. 402.

Voluntary Gift:—

- (v.) **Ch. Div. V. C. B.**—*Gift by Infant to Relative—Fiduciary Position.*—An infant orphan, aged 20, on her death-bed made an absolute gift of moneys to a married female cousin with whom she was living: Held, on the evidence, that there was no undue influence exercised, and that the gift was good.—*Taylor v. Johnston*, 46 L.T. 219; 30 W.R. 508.

Will:—

- (vi.) **Ch. Div. K. J.**—*Directions as to Burial—Bequest of Body.*—A man cannot dispose of his body by will; it is the executor's duty to bury it, and they have a right to its possession for that purpose.—*Williams v. Williams*, 46 L.T. 275; 30 W.R. 438.
- (vii.) **Ch. Div. C. J.**—*Construction—Appointment of Solicitor to Trust Estate.*—A direction in a will appointing a particular person solicitor to the trust estate imposes no duty on the trustees of the will to continue such person their solicitor in the management of the estate.—*Foster v. Elsley*, L.R. 19 Ch. D. 518; 51 L.J. Ch. 275.
- (viii.) **Ch. Div. K. J.**—*Construction—Appurtenances.*—The word "appurtenances" does not properly include land when the principal subject of gift is land or a message; but in a will, if the circumstances

and context show that land was meant to pass as appurtenant, the word is flexible enough to carry such land.—*Cuthbert v. Robinson*, 51 L.J. Ch. 238; 46 L.T. 57; 30 W.R. 366.

- (i.) **Ch. Div. V. C. B.**—*Construction—Bequest of Share of Partnership—Ademption—Wills Act, ss. 23, 24.*—Testator, after reciting that one-third of a business belonged to him, bequeathed all his share and interest in the business to trustees on certain trusts. He afterwards acquired the whole business: *Held* that the whole business passed under the bequest.—*Russell v. Chell*, L.R. 19 Ch. D. 432; 30 W.R. 454.
- (ii.) **Ch. Div. K. J.**—*Construction—Cross-Limitations by Implication.*—A will contained a gift of property on trust for testator's five children in equal shares for life, with remainders to their issue, *per stirpes*, and cross limitations over among the five children on failure of issue: *Held* that the Court would imply cross-limitations over between each separate group of grand-children.—*Hudson v. Hudson*, 46 L.T. 93; 30 W.R. 487.
- (iii.) **Ch. Div. F. J.**—*Construction—Gift over on Death—Substitution.*—Testator gave his residue on trust for the children of L. equally; in case of the death of any of them leaving a family, such share as the parents would have taken to be equally divided among the children of such deceased parents: *Held* that the children of L. who survived testator took absolutely, and that the children of a child of L. who had died since date of will and before testator, took the share their parent would have taken.—*Cherry v. Lingwood*, L.R. 19 Ch.D. 470; 45 L.T. 790; 30 W.R. 315.
- (iv.) **Ch. Div. V. C. H.**—*Construction—Lapse—Death in Testator's Lifetime—Wills Act, s. 33.*—Testator devised specific freeholds to his son and his heirs, and made a residuary gift of realty to other persons. The son died in testator's lifetime, leaving issue, and having devised all his real estate to his father: *Held* that by virtue of sec. 33 of Wills Act, the son must be held to have survived his father, and therefore the specific freeholds went to the son's heir-at-law.—*Jones v. Hensler*, 51 L.J. Ch. 303; 45 L.T. 672; 30 W.R. 482.
- (v.) **P. D. A. Div.**—*Construction—Life Estate.*—Testatrix bequeathed all her property to her two sisters; and in case of the demise of either of them to the survivor for her sole use and benefit during her or their natural lifetime: *Held* that the sisters took life estates only.—*Watson v. Watson*, L.R. 7 P.D. 10; 51 L.J. P.D.A. 13; 30 W.R. 275.
- (vi.) **Ch. Div. V. C. H.**—*Construction—Next-of-Kin.*—Where testator gives property in trust for the benefit of the persons who, at a time subsequent to his own death shall by virtue of the Statutes of Distribution, be his next-of-kin, the class is an artificial class, to be ascertained on the hypothesis that the testator lives up to and dies at the period of distribution.—*Sturge v. Great Western Rail. Co.*, L.R. 19 Ch. D. 444; 51 L.J. Ch. 185; 45 L.T. 787; 30 W.R. 456.
- (vii.) **Ch. Div. V. C. H.**—*Construction—Restraint on Anticipation.*—Testatrix left her property to trustees on trust to sell and invest, and stand possessed of the investments for her children in equal shares, the shares of daughters to be for their separate use without power of anticipation. *Held* that the trustees could not pay over part of the shares of married daughters to them during coverture, on their separate receipts.—*Smith v. Smith*, L.R. 19 Ch. D. 277; 51 L.J. Ch. 183; 45 L.T. 786; 30 W.R. 242.
- (viii.) **Ch. Div. F. J.**—*Construction—Specific Bequest.*—Testator gave all his personal estate and effects of which he should die possessed and which should not consist of money or securities for money to A. and the residue of his estate to trustees: *Held* that the gift to A. was specific.—*Broadbent v. Barrow*, 46 L.T. 232; 30 W.R. 483.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times
Reports, and Weekly Reporter,

FOR MAY, JUNE, AND JULY, 1882.

By HENRY M. KEARY, of Lincoln's Inn, Barrister-at-Law.

Administration:—

- (i.) **Ch. Div. F. J.**—*Administrator—Power to Mortgage—Leaseholds.*—An administrator has no power to mortgage leaseholds of the intestate in order to raise money for repairing the property, when the lease does not bind the lessee to repair.—*Ricketts v. Lewis*, 46 L.T. 368; 30 W.R. 609.
- (ii.) **Ch. Div. F. J.**—*Insolvent Estate—Judgment Creditor—Priority—Bankruptcy Act, 1869, s. 32—Judicature Act, 1875, s. 10.*—The priority to which a creditor, who has obtained judgment against the executors of his deceased debtor, is entitled in an administration action over other creditors of the same class, is not affected by sec. 10 of Judicature Act, 1875: *Held* also, that a creditor who had obtained such a judgment and had delayed for three years to enforce it, did not by such delay lose his right to priority, he not having had notice of the debtor's insolvency.—*Winehouse v. Winehouse*, 51 L.J. Ch. 560; 46 L.T. 362; 30 W.R. 729.
- (iii.) **Ch. Div. F. J.**—*Judgment Debt—Priority—4 & 5 W. & M., c. 20, s. 3—23 & 24 Vict., c. 38, s. 3.*—A judgment debt which has not been registered ranks *pari passu* with simple contract debts in the administration of an estate.—*Van Ghelave v. Nerinck*, 30 W.R. 789.
- (iv.) **Ch. Div. V. C. B.**—*Legacy of Income—When Payable—Wife's Separate Business—Gift by Husband to Wife.*—Testator directed his trustees to invest £1000 in specified securities and pay the income to his wife. At his death £1000 was actually invested in those securities: *Held* that the wife was not entitled to interest on the £1000 till the end of the second year after testator's death. The wife claimed to prove in respect of goods forming part of the stock in trade of a business which she alleged that she carried on separately: *Held* that she could not do so as her evidence was uncorroborated. She also claimed a piano given to her by testator: *Held* a good gift.—*Whittaker v. Whittaker*, 30 W.R. 787.

Agreements and Contracts :—

- (i.) **Q. B. Div.**—*Breach—Damages—Remoteness.*—In an action for breach of contract to deliver goods, it appeared that the goods were not procurable in the market, that plaintiff had entered into a contract of subsale, which, in consequence of the breach of contract, he could not perform, that defendant did not know of this contract, but that he knew that plaintiff had bought for resale: *Held* that plaintiff could not recover damages for loss of profit on the resale.—*Thol v. Henderson*, L.R. 8 Q.B.D. 457; 46 L.T. 483.
- (ii.) **C. A.**—*Covenant against User—Threatened Breach—Injunction.*—A person who has covenanted not to use a building for certain purposes will not be restrained from erecting a building seemingly adapted for such purposes.—*Worsley v. Swann*, 51 L.J. Ch. 576.
- (iii.) **C. A.**—*Sale of Shares—Custom of Stock Exchange—Negligence—30 Vict., c. 29, s. 1.*—Defendants being instructed by plaintiffs to sell certain shares in a company, for the account, did so, and exchanged bought and sold notes, which were void under 30 Vict., c. 29, s. 1, as they did not state in whose name the shares stood. Before the name day the company became insolvent, and the transferee repudiated the contract: *Held*, in an action for damages against defendant, that an alleged custom on the Stock Exchange to disregard the provisions of 30 Vict., c. 29, was no defence.—*Neilson v. James*, 51 L.J. Q.B. 369.

Arbitration :—

- (iv.) **Q. B. Div.**—*Costs of Reference and Award.*—An arbitrator having authority under the submission to deal with the costs of the reference, has authority to deal with the costs of the award.—*Re Walker and Brown*, 51 L.J. Q.B. 424; 30 W.R. 703.

Bank :—

- (v.) **C. A.**—*Bank of England—Action on Note—Alteration of Number.*—Decision of Q. B. Div. (see vi., p. 2) reversed.—*Suffell v. Bank of England*, 51 L.J. Q.B. 401.

Bankruptcy :—

- (vi.) **C. A.**—*Appeal—Deposit—Bankruptcy Rules, 1870, r. 145; 1878, r. 2.*—Decision of C. J. B. (see vii., p. 48) affirmed.—*Ex parte Rosenthal, Re Dickinson*, L.R. 20 Ch. D. 815; 51 L.J. Ch. 559; 30 W.R. 667.
- (vii.) **Ch. Div. V. C. H.**—*Bankruptcy in Australia.*—Upon a bankruptcy in Australia, real estate of the bankrupt out of the colony does not become vested in his assignee.—*Waite v. Bingley*, 30 W.R. 698.
- (viii.) **C. A.**—*Close of Bankruptcy—Re-opening—Bankruptcy Act, 1869, ss. 47, 71.*—The Court has power to re-open a bankruptcy after an order has been made closing it, but such an order will not be made without notice to creditors whose debts have been contracted after the adjudication, nor without letting them in to prove against property of the bankrupt acquired after the close of the bankruptcy.—*Ex parte Pitt, Re Gosling*, L.R. 20 Ch. D. 308; 30 W.R. 763.
- (ix.) **C. J. B.**—*Composition—Delay in Registering Resolutions.*—A debtor will not be allowed, by delaying registration of the resolutions, to postpone payment of a composition which has been accepted by his creditors.—*Ex parte Whitnall, Re Whitnall*, L.R. 20 Ch. D. 438; 46 L.T. 775.
- (x.) **C. A.**—*Composition—Examination of Debtor—Presence of Short-hand Writer.*—A meeting of creditors under a liquidation petition refused to allow a short-hand writer to be present on behalf of one of the creditors to take notes of the debtor's examination by him, and no note of the

examination was taken. The debtor's statement was, in the opinion of the Court, insufficient. Resolutions accepting a composition were passed by the statutory majority: *Held* that the proceedings were irregular, and that the resolutions ought not to be registered, but that a fresh meeting ought to be summoned.—*Ex parte Solomon, Re Tilley*, L.R. 20 Ch. D. 281; 30 W.R. 603.

- (i.) **C. A.**—*Composition—No Assets*.—A debtor filed a liquidation petition showing £1,293 debts and no assets. A majority of the creditors passed resolutions accepting a composition of sixpence in the pound, though it was known that the debtor was in receipt of £5 a week salary: *Held* that the resolutions ought not to be registered.—*Ex parte Ball, Re Parnell*, 30 W.R. 738.
- (ii.) **C. A.**—*Evidence—Deposition on File—Service of Copy—Costs*.—When a party to an application in the Bankruptcy Court gives notice of his intention to use as evidence at the hearing of an application a deposition which is on the file, though filed for another purpose, he ought not to serve his opponent with a copy of it.—*Ex parte Hall, Re Cooper*, L.R. 19 Ch. D. 580; 51 L.J. Ch. 556; 46 L.T. 549.
- (iii.) **C. A.**—*Evidence—Witness—Refusal to Answer—Tending to Criminalise*.—Decision of C. J. B. (see iii., p. 49) affirmed.—*Ex parte Reynolds, Re Reynolds*, L.R. 26 Ch. D. 294; 46 L.T. 508; 30 W.R. 651.
- (iv.) **C. A.**—*Fraudulent Preference—Pressure by Creditor—Bankruptcy Act, 1869, s. 92*.—On the 17th of February, a debtor told one of his creditors that he was about to stop payment, and the creditor then pressed for security for his debt and threatened to commence proceedings at once, if he did not fulfil a previous verbal promise to give the creditor goods or their equivalent as a security. On the 19th of February the debtor gave two bills of exchange accepted by other firms, to a third person, to be handed to the creditor, and on the 24th he filed a liquidation petition and was afterwards made a bankrupt: *Held* that the delivery of the bills of exchange was a fraudulent preference.—*Ex parte Hall, Re Cooper*, L.R. 19 Ch. D. 580; 51 L.J. Ch. 556; 46 L.T. 549.
- (v.) **C. A.**—*Lease—Disclaimer—Chattels—Order and Disposition—Bankruptcy Act, 1869, ss. 15, 23*.—Ironworks with loose tools and machinery were demised together at an entire rent. The trustee in liquidation of the lessee disclaimed the lease, and then claimed the tools and machinery as being in the debtor's order and disposition: *Held* that on the execution of the disclaimer, the tools and machinery were surrendered to the lessor.—*Ex parte Allen, Re Fussell*, L.R. 20 Ch. D. 341; 30 W.R. 601.
- (vi.) **C. J. B.**—*Liquidation—Receiver and Manager—Bankruptcy Rules, 1870, r. 260*.—The creditors under a liquidation are entitled to nominate the receiver and manager.—*Ex parte Walton, Re Walton* 51 L.J. Ch. 539; 46 L.T. 434; 30 W.R. 642.
- (vii.) **C. J. B.**—*Notice of Act of Bankruptcy—Available for Adjudication—Bankruptcy Act, 1869, ss. 94, 95*.—A creditor claimed to retain money in respect of transactions in relation to the bankrupt's property, entered into at a time when they had notice of an act of bankruptcy committed by him to which the title of the trustees related back, but committed more than six months before the presentation of the petition on which he was adjudicated bankrupt: *Held* that this was not a protected transaction within sec. 95, sub-sec. 1, Bankruptcy Act.—*Ex parte Tiliard, Re Barnes*, 30 W.R. 568.
- (viii.) **C. A.**—*Notice of Act of Bankruptcy—Available for Adjudication—Bankruptcy Act, 1869, ss. 94, 95*.—A trader committed an act of bankruptcy, and more than six months afterwards was adjudicated a bankrupt upon a second act. Between the dates of the two acts money was

paid to him by a depository having notice of the first act of bankruptcy : *Held* that the payment was protected by sec. 94, sub-sec. 2 of Bankruptcy Act.—*Ex parte Quillet, Re Barnes*, 30 W.R. 739.

- (i.) **C. A.**—*Petition—Secured Creditor—Formal Defect—Amendment—Bankruptcy Act*, 1869, ss. 6, 82.—A petitioning creditor stated in his petition, that he had no security for his debt. He in fact had a charge on some property of the debtor, and informed the debtor's solicitors that the security was not valued at anything. At the hearing he stated he would give it up for the benefit of the creditors, and the registrar dismissed the petition as not complying with sec. 6 of Bankruptcy Act : *Held* that the registrar should have amended the petition and made the adjudication.—*Ex parte Vanderlinden, Re Pogose*, L.R. 20 Ch. D. 289.
- (ii.) **C. A.**—*Power to Order Bankrupt to File Cash Account—Bankruptcy Act*, 1869, s. 19.—The Court has power to order a bankrupt to file a cash account of his receipts and payments.—*Ex parte Moir, Re Moir*, 30 W.R. 738.
- (iii.) **Q. B. Div.**—*Stoppage in Transitu—Goods in Warehouse*.—The right of an unpaid vendor to stop delivery of goods whilst in transit is not determined until the goods have been actually delivered to the purchaser or to his agent to keep the goods. Goods carried by railway and warehoused on arrival, at the risk of an agent instructed by the purchaser to ship them, are not so delivered.—*Kendall v. Marshall*, 46 L.T. 693.
- (iv.) **C. A.**—*Trustee—Appointment of—Purchase of Debt—Undue Influence—Trustee's Solicitor—Costs*.—It is a gross abuse of the bankruptcy law for anyone to purchase a debt owing from the bankrupt with the view to carry the choice of a trustee ; and it is also improper to seek to obtain influence over a trustee by purchasing a debt due from him. The solicitor to a trustee who had been appointed by means of such improper proceedings : *Held* not entitled to his costs out of the estate.—*Ex parte Harper, Re Pooley*, 30 W.R. 650.
- (v.) **C. A.**—*Trust Fund Mis-applied—Following Trust Moneys*.—Decision of Q. B. Div. (see iv., p. 4) affirmed.—*Harris v. Truman*, 51 L.J. Q.B. 338 ; 30 W.R. 533.

Bill of Sale :—

- (vi.) **Q. B. Div.**—*Consideration—41 & 42 Vict., c. 31, s. 8*.—A bill of sale, after reciting that the mortgagor had applied to the mortgagee for an advance of £70, less £16 agreed interest and expenses to be retained as thereafter expressed, witnessed that in consideration of £54, being the said £70 less the sum of £16 deducted and retained therefrom, and which said sums of £54 and £16 conjointly were paid to the mortgagor by the mortgagee, &c. In fact only £54 had been paid to the mortgagor : *Held* that the consideration was truly set forth within the meaning of sec. 8 of Bills of Sale Act, 1878.—*Collis v. Tuson*, 46 L.T. 387.
- (vii.) **C. A.**—*Registration—Affidavit of Attestation—41 & 42 Vict., c. 31, ss. 8, 10*.—The affidavit of the execution and attestation of a bill of sale must state that the attesting solicitor was present and witnessed the due execution.—*Ford v. Kettle*, 46 L.T. 666 ; 30 W.R. 741.

Charity :—

- (viii.) **Ch. Div. K. J.**—*Action under trusts of Charity Deed—Consent of Charity Commissioners—16 & 17 Vict., c. 137, ss. 17, 62*.—An action to administer the trusts of a deed regulating the mode of worship in a building registered and used as a place of meeting for religious worship, cannot be brought without the consent of the Charity Commissioners.—*Glen v. Gregg*, 51 L.J. Ch. 551 ; 46 L.T. 375 ; 30 W.R. 633.

Common :—

- (i.) **Ch. Div. F. J.**—*Copyholder—Prescriptive Right—Conservators of Common—Right of Action—2 & 3 Will. IV., c. 71, s. 1.*—Conservators were appointed under a special Act to preserve a common for public recreation, the rights of commoners being saved. Defendant, an occupier of copyhold lands, claimed a prescriptive right to turn out an unlimited number of beasts, having done so for more than forty years: *Held* that no such right could be claimed, as, in order to have a legal origin, the claim must be either for a fixed number or by levancy and couchancy; and that defendant could be sued by the conservators under the power in their Act enabling them to prevent unauthorised person from turning out cattle.—*Morley v. Clifford*, 46 L.T. 561; 30 W.R. 606.
- (ii.) **Ch. Div. V. C. H.**—*Inclosure—Agreement between Lord and Tenants—29 Geo. II., c. 36.*—The Act 29 Geo. II., c. 36, does not apply to agreements by persons having a right to property in bushes and underwood; but only to agreement by persons entitled to common of pasture.—*Nicholls v. Mitford*, L.R. 20 Ch. D. 380; 51 L.J. Ch. 485; 30 W.R. 509.

Company :—

- (iii.) **C. A.**—*Allotment of Shares—Constitution of Company.*—The articles of a company provided that the directors should be not less than three, and that any casual vacancy might be filled up by the board, and that the board might act notwithstanding any vacancy in their body. There were only three directors; one resigned and afterwards the remaining two allotted shares to defendant, and elected him a director; defendant attended a meeting of directors and confirmed the allotment: *Held* that the allotment was binding on him and he was liable to pay calls on the shares.—*York Tramways Co. v. Willows*, L.R. 8 Q.B.D. 685; 51 L.J. Q.B. 257; 46 L.T. 296; 30 W.R. 624.
- (iv.) **C. A.**—*Articles of Association—Lien on Shares—Debt of Joint Holder.*—Decision of V. C. B. (see iv., p. 52) affirmed.—*New London and Brazilian Bank v. Brocklebank*, 30 W.R. 737.
- (v.) **C. A.**—*Promoter—Misrepresentation in Prospectus—Action for Deceit.*—The prospectus of a company stated that the present value of the turn over or out-put of the entire works was more than a million sterling per annum. Plaintiff, in an action against the promoters for mis-statements in the prospectus alleged that this was untrue: *Held* that the expression was ambiguous, and that as plaintiff did not state in what sense he understood it, he could not rely on it as a ground of action. The following mis-statements also held not to afford a ground of action: a person being incorrectly stated to be a director, it appearing that such statement did not influence plaintiff in taking shares; a mistake of £3,000 out of £301,000 in the valuation of the property of the company, and the omitting to state that future instalments of purchase-money to be paid by the company carried interest.—*Smith v. Chadwick*, L.R. 20 Ch. D. 27; 46 L.T. 702; 30 W.R. 661.
- (vi.) **Ch. Div. F. J.**—*Winding-up—Contributory—Director—Qualification Shares.*—A mere application for the number of shares necessary for the qualification of a director, together with the fact of acting as a director, will not, when no shares are ever allotted, constitute a contract to take shares, so as to make applicant liable as a contributory.—*Carmichael and Hewitt's Case, Re Electric and Magnetic Co.*, 46 L.T. 653; 30 W.R. 742.
- (vii.) **Ch. Div. F. J.**—*Winding-up—Contributory—Life Assurance—Participating Policy—Assignment.*—Under the articles of association of an assurance society members included the holders of participating policies duly registered and the directors had power to require evidence of assignment of policies before registering the assignee. A policy was

assigned, and the assignee paid the premiums on it five months before winding-up, but no evidence of assignment was offered to the directors, and the assignee was not registered as a member: *Held* that the assignee was not a contributory.—*Sanders' Case, Re Albion Life Assurance Society*, L.R. 20 Ch. D. 403; 51 L.J. Ch. 579.

- (i.) **Ch. Div. F. J.**—*Winding-up—Contributory—Paid-up Shares—Nominee of Vendor*—30 & 31 Vict., c. 131, s. 25.—Where a vendor to a company has contracted to accept part of his purchase-money in shares to be issued as partly paid up, and the contract is duly registered, the vendor's nominee is entitled to the benefit of the contract in the winding-up of the company.—*Kirby's Case, Re Dominion of Canada Plumbago Co.*, 46 L.T. 682.
- (ii.) **Ch. Div. F. J.**—*Winding-up—Director's Liability—Dividends out of Capital—Companies Act, 1862, s. 165.*—The Articles of a Company provided that all moneys borrowed, or received under fire insurances, should be deemed capital, and that no dividends should be paid out of capital. The directors paid dividends on preference shares out of moneys received under a fire insurance, and also out of moneys borrowed expressly for the purpose. The persons who had advanced the moneys afterwards proved in respect of such moneys in the winding-up: *Held* that the directors were liable to refund the dividends paid out of the insurance moneys, and the amount obtained by the persons who had advanced the loans to the company under their proof in the winding-up.—*Re Alexandra Palace Co.*, 46 L.T. 730; 30 W.R. 771.
- (iii.) **Ch. Div. V. C. B.**—*Winding-up—Directors' Liability—Dividends out of Capital—Set-off—Statute of Limitations—Companies Act, 1862, s. 165.*—*Held* that directors of a company who had paid dividends out of capital were guilty of a breach of trust within sec. 165 of Companies Act, 1862, and jointly liable to refund the money so paid, that the Statute of Limitations did not affect their liability, and that they were not entitled in the winding-up of the company, to set off debts due to them from the company.—*Re Exchange Banking Co.*, 51 L.J. Ch. 525; 46 L.T. 474; 30 W.R. 695.
- (iv.) **C. A.**—*Winding-up—Evidence—Form of Affidavit—Companies Act, 1862, s. 170—Ord. 37, r. 3.*—It is now too late to object to rule 4 of the Order of November, 1862, made under sec. 170 of Companies Act, 1862, as being *ultra vires*, and that rule is not affected by anything in the Judicature Acts and Rules.—*Re New Callao Co.*, 30 W.R. 647.
- (v.) **C. A.**—*Winding-up—Impossibility of Carrying on Business.*—When the Court is satisfied that there is no possibility of carrying on the principal business for which a company has been formed, a winding-up order will be made though the company is carrying on a subsidiary business included in the articles, and the petition has been presented within a year from its incorporation.—*Re German Date Coffee Co.*, L.R. 20 Ch. D. 169; 51 L.J. Ch. 564; 46 L.T. 327; 30 W.R. 717.
- (vi.) **Ch. Div. F. J.**—*Winding-up—Official Liquidator—Action against—Personal Contract.*—The Court refused to restrain an action against an official liquidator personally for work done for the benefit of the estate.—*Re Original Hartley Pool Collieries Co.*, 51 L.J. Ch. 508.
- (vii.) **C. A.**—*Winding-up—Rent—Leave to Distrain—Companies Act, 1862, ss. 87, 163.*—A person in the position of a landlord to a company in liquidation, who has not distrained before the commencement of the winding-up, is *prima facie* only an unsecured creditor in respect of the rent, and can only prove for all rent due at date of proof, and cannot distrain without the leave of the Court. Rules adopted by the Court as to giving such leave stated.—*Re Oak Pitts Colliery Co.*, 30 W.R. 759.

Copyright :—

- (i.) **Ch. Div. N. J.**—*Music—Dramatic Piece*—3 & 4 Will. IV., c. 15—5 & 6 Vict., c. 45, ss. 20, 22.—The publication of a dramatic piece or musical composition as a book before it has been publicly performed does not deprive the author or his assignee of the exclusive right of performing it.—*Chappell v. Boosey*, 30 W.R. 733.
- (ii.) **Q. B. Div.**—*Picture—License to Re-produce—Registration*—15 & 16 Vict., c. 12, s. 14—25 & 26 Vict., c. 68.—The assignee of the copyright in a picture sold to plaintiff the sole right to reproduce it in chromo for two years. This agreement was not registered, and plaintiff's chromolithograph plate was not engraved with the name of the proprietor and date of publication as required by 15 & 16 Vict., c. 12, s. 14. Defendant published chromo-lithographs of the same picture made independently: Held that plaintiff was entitled to recover damages from defendant, as the license to reproduce did not require registration, and defendant had infringed the copyright in the original picture.—*Tuck v. Canton*, 51 L.J. Q.B. 363.

County Court :—

- (iii.) **P. D. A. Div.**—*Admiralty Jurisdiction*—31 & 32 Vict., c. 71—32 & 33 Vict., c. 51.—The jurisdiction conferred by sec. 2 of County Courts Admiralty Jurisdiction Act, 1869, is not ousted by its being shown that the owners of the ship proceeded against were, at the institution of the suit, domiciled in England and Wales, and it extends to cases where the assignee of a bill of lading claims damages in respect of a breach of contract in such bill of lading.—*The Rona*, 46 L.T. 601; 30 W.R. 614.

Crimes and Offences :—

- (iv.) **Q. B. Div.**—*Adulteration—Prosecution by Private Person*—38 & 39 Vict., c. 63, ss. 6, 14.—A private person taking proceedings under sec. 6 of Sale of Food and Drugs Act, must comply with the provisions of sec. 14.—*Parsons v. Birmingham Dairy Co.*, 30 W.R. 748.
- (v.) **C. C. R.**—*Assault—Prize-Fight—Aiding and Abetting*.—A prize-fight is illegal, and all persons aiding and abetting therein are guilty of assault, but mere voluntary presence thereat does not, as a matter of law, necessarily render persons so present guilty of assault as aiding and abetting the fight.—*Regina v. Coney*, L.R. 8 Q.B.D. 534; 51 L.J. M.C. 66; 46 L.T. 307; 30 W.R. 678.
- (vi.) **Q. B. Div.**—*Elementary Education—Attendance at School—Reasonable Excuse—Bye-Law*.—The bye-laws made by a school attendance committee provided that the parent of every child between five and thirteen years of age should cause such child to attend school, unless there should be a reasonable excuse, and any of the following reasons should be reasonable excuses, namely, efficient instruction elsewhere, prevention by sickness or other unavoidable cause, no elementary school within two miles. On a summons against respondent for not causing his child to attend school, it was proved that the child had invariably been sent from home in proper time, and that on two occasions only had respondent been informed of the non-attendance of the child: Held that the magistrates were justified in holding that respondent had a reasonable excuse.—*Belper School Board Committee v. Bailey*, 51 L.J. M.C. 91.
- (vii.) **Q. B. Div.**—*Elementary Education—Attendance Order*—39 & 40 Vict., c. 79, ss. 8, 11, 48—41 Vict., c. 16.—The effect of the repeal of sec. 8 of Elementary Education Act, 1878, by 41 Vict., c. 16, is to virtually repeal sec. 11, sub-sec. 1 of the former Act.—*Saunders v. Crawford*, 46 L.T. 420.

- (i.) **Q. B. Div.—Elementary Education—Penalty—33 & 34 Vict., c. 75, s. 74.**—The limit of five shillings imposed by sec. 74 of Elementary Education Act, 1879, to the amount of the fine with costs to be imposed in respect of the breach of any bye-law, does not include the costs of a distress to enforce payment under 11 & 12 Vict., c. 43, s. 19.—*Cook v. Plaskett*, 46 L.T. 383.
- (ii.) **Q. B. Div.—Extradition—Subject of State not party to Treaty—Foreign Warrant—Authentication—33 & 34 Vict., c. 52.**—Held that the provisions of the Extradition Treaty between the United Kingdom and the Netherlands apply to all persons whatsoever their nationality, who have committed any of the crimes specified in the treaty within jurisdiction of the State requiring extradition. A document produced before a magistrate as the foreign warrant of arrest under sec. 10 of Extradition Act, 1870, was sealed with the seal of the department of justice at the Hague, and purported to be a copy of the decrees of the criminal court there, authorizing the criminal's arrest: Held that this was a sufficiently authenticated foreign warrant within that section.—*Regina v. Ganz*, L.R. 9 Q.B.D. 93; 51 L.J. Q.B. 419; 46 L.T. 592.
- (iii.) **C. C. R.—Larceny—24 & 25 Vict., c. 96, s. 76.**—A solicitor was intrusted by a client with money to invest on mortgage on the client's behalf, and he fraudulently misappropriated it to his own use: Held that no offence had been committed under sec. 76 of Larceny Act.—*Regina v. Newman*, L.R. 8 Q.B.D. 706; 51 L.J. M.C. 87; 46 L.T. 394; 30 W.R. 550.

Debtor and Creditor:—

- (iv.) **Q. B. Div.—Accord and Satisfaction—Payment by Cheque for Smaller Amount.**—Payment by a cheque for £100 payable on demand and duly honoured, given and accepted in settlement of a debt of £125, is a good accord and satisfaction as to the whole debt.—*Goddard v. O'Brien*, L.R. 9 Q.B.D. 37; 46 L.T. 306; 30 W.R. 549.
- (v.) **Q. B. Div.—Attachment of Debt—Secretary's Salary—33 & 34 Vict., c. 30, s. 1.**—A judgment debtor was secretary to a company, and in receipt of £200 a year paid quarterly: Held that he was not a servant within the Wages Attachment Abolition Act, 1870.—*Gordon v. Jennings*, L.R. 9 Q.B.D. 45; 51 L.J. Q.B. 417; 46 L.T. 534; 30 W.R. 704.
- (vi.) **Ch. Div. F. J.—Charge on Present and Future Property.**—D., shortly before his death, executed a charge in favour of T., whereby he charged all his present and future personalty with all sums due to T., at any time he should make use of the charge: Held that the charge was void as to future property, but valid as to property belonging to D. at the date of the charge.—*Tadman v. D'Epineuil*, 30 W.R. 702.
- (vii.) **C. A.—Committal—Means of Debtor—Wife's Separate Estate—32 & 33 Vict., c. 62, s. 5.**—Defendant had allowed judgment to go by default for £29 for hay and oats supplied by plaintiffs for horses kept at a residence where defendant was living with his wife. Defendant was an undischarged bankrupt, but his wife had separate property. The Court discharged an order for defendant's committal, being satisfied, on the evidence, that he had no means of paying the debt.—*Chard v. Jervis*, 51 L.J. Ch. 439; 30 W.R. 504.
- (viii.) **Ch. Div. N. J.—Committal—Discharge at end of year—32 & 33 Vict., c. 62, s. 4.**—Where a note was added to a writ of attachment that the writ did not authorise an imprisonment for more than one year: Held on motion to discharge the prisoner, that no order for his discharge was necessary.—*Brooks v. Edwards*, 30 W.R. 656.

- (i.) **C. A.—Debtor's Summons—Rules of Stock Exchange—Settling day obtained by Fraud—Defaulter—Distribution of Assets—Security.**—By the rules of the London Stock Exchange bargains in the shares of a new company are contingent on the appointment of a special settling day by the committee: *Held*, that if the appointment of a settling day has been obtained by fraud, the validity of contracts in relation to shares is unaffected thereby. A creditor of a defaulter on the Stock Exchange who has taken the benefit of the private distribution of Stock Exchange assets made by the Stock Exchange official assignee, is not precluded from taking legal proceedings for the recovery of the balance of his debt. Where proceedings on a debtor's summons are stayed, pending an action to try the validity of the debt, in determining whether the debtor shall give security, regard ought to be had to the probability of his success in the action as well as to his solvency.—*Ex parte Ward, Re Ward*, L.R. 20 Ch. D. 356; *Ex parte Harris, Re Ward*, 30 W.R. 560.
- (ii.) **C. A.—Fraudulent Conveyance—13 Eliz., c. 5.**—Decision of Fry, J. (see iv., p. 55) affirmed.—*Golden v. Gilham*, 51 L.J. Ch. 503.
- (iii.) **Q. B. Div.—Illegal Consideration—Compounding Felony.**—In order to render illegal the receipt of securities by a creditor from his debtor, where the debt has been contracted under circumstances which might render the debtor liable to criminal proceedings, it is not enough to show that the creditor was thereby induced to abstain from prosecuting.—*Flower v. Sadler*, L.R. 9 Q.B.D. 83.
- (iv.) **C. A.—Insolvency—Close of—32 & 33 Vict., c. 83.**—Decision of Kay, J. (see v., p. 53) affirmed.—*Fordham v. Clagett*, 46 L.T. 719.
- (v.) **Ch. Div. K. J.—Money Lending—Advertisement—Representation.**—Where a man represents to the public by advertisement that he will lend money on easy terms, and afterwards lends it on very hard terms, the onus lies upon him to show that he has removed from the borrower's mind the impression produced by such representation, and has explained to him the terms on which the loan is made.—*Moorhouse v. Wolfe*, 46 L.T. 374.

Defamation:—

- (vi.) **Q. B. Div.—Libel—Evidence—Character of Plaintiff—Pleading—Ord. 19, r. 4.**—In an action for libel, defendant pleaded that the libel was true, and tendered evidence of plaintiff's general bad character, of the existence of rumours before publication of the libel that plaintiff had been guilty of the conduct imputed to him, and of particular acts of misconduct: *Held* that evidence of general bad character could not be admitted as it was not referred to in the statement of the defence, and that evidence under the other heads was never admissible.—*Scott v. Sampson*, L.R. 8 Q.B.D. 491; 51 L.J. Q.B. 380; 46 L.T. 412; 30 W.R. 541.
- (vii.) **C. A.—Libel—Injunction to Restrain Publication—Judicature Act, 1873, s. 25 (8).**—A shareholder in a company issued a circular to the other shareholders intimating that the company was a rotten one and inviting co-operation in self-defence: *Held* that, though the Court had jurisdiction on an interlocutory application to restrain the issue of the circular, it would not do so because the statements were not shown to be false, there was no allegation of an intention to continue the issue of the circular, and it was a privileged communication.—*Quarts Hill Gold Mining Co. v. Beall*, 46 L.T. 746; 30 W.R. 583.

Easement:—

- (viii.) **Ch. Div. K. J.—Fascia—Unity of Ownership—Division of Tenements.**—Plaintiff was lessee of No. 2 in a street, the successive occupiers of which premises had since 1852, painted their names on a fascia, part of

which extended over No. 8, belonging to the same landlord : *Held*, on the evidence, that the fascia formed part of plaintiff's tenement, and was not included in the lease of No. 8.—*Francis v. Hayward*, 46 L.T. 669; 80 W.R. 744. •

- (i.) **Q. B. Div.**—*Highway—Right to Support—Adjoining Wall—Repair.*—When a servitude of support to a highway by a wall has been acquired, the owner of the highway is, in the absence of express stipulation, bound to repair the wall when out of repair and insufficient to support the highway.—*Stockport Highway Board v. Grant*, 51 L.J. Q.B. 357; 46 L.T. 388.
- (ii.) **O. A.**—*Light—Prescription—New Windows.*—Where new windows have been substituted for ancient lights, accurate evidence of the position of the ancient lights and of their coincidence with the new windows must be produced in order to obtain an injunction against obstruction.—*Fowlers v. Walker*, 51 L.J. Ch. 443.

Ecclesiastical Law :—

- (iii.) **P. C.**—*Ecclesiastical Offence—Sentence of Court.*—A judge has no discretion, while finding a defendant guilty of ecclesiastical offences, to absolve him from all ecclesiastical censure or punishment, but should pronounce what he considers to be an appropriate sentence.—*Martin v. Mackonochie*, L.R. 7 P.D. 94; 46 L.T. 699.
- (iv.) **Archdeacon Ct.**—*Faculty—Judicial Discretion.*—On an application by the incumbent and churchwardens of a parish with the consent of the vestry for a faculty for alterations in the parish church, they should be able to show that the alterations will render the church more convenient and fit for the accommodation of the parishioners, or that a majority of the congregation desires the alterations.—*Peck v. Trover*, L.R. 7 P.D. 21.
- (v.) **H. L.**—*Monition—Inhibition—37 & 38 Vict., c. 85.*—A monition admonished a clerk to abstain for the future from doing certain acts specified in the representation on which the monition was founded; and also from all practices, acts and things of the same or like nature : *Held* that the judge had jurisdiction to insert this last clause in the monition. An inhibition recited the disobedience of the clerk to the monition on which it was founded in regard to certain acts specified in the monition : *Held* that it was no ground for a prohibition that the inhibition also recited the disobedience of the clerk with respect to certain other acts not specifically referred to in the monition.—*Enraght v. Lord Pensance*, L.R. 7 App. 240; 80 W.R. 753.
- (vi.) **Q. B. Div.**—*Promotion of Suit by Bishop—Hearing—3 & 4 Vict., c. 86, ss. 7, 13.*—A bishop, who promotes a suit against a clerk holding preferment in his diocese, in pursuance of secs. 7, 13, of Church Discipline Act, 1840, and who is not patron of the living of the clerk, is not disqualified from hearing and determining the suit so promoted, by a mere allegation of interest.—*Regina v. Bishop of St. Albans*, 46 L.T. 692.
- (vii.) **Archdeacon Ct.**—*Representation by Churchwarden—New Churchwarden—37 & 38 Vict., c. 85, s. 8.*—When a representation under the Public Worship Regulation Act, 1874, in which the incumbent of a parish church is the party complained of, is made by a churchwarden of the parish, who subsequently ceases to be churchwarden, the Court has no power to substitute the newly-elected churchwarden as complainant, or give him leave to intervene.—*Perkins v. Enraght*, L.R. 7 P.D. 31.

Election :—

- (viii.) **Q. B. Div.**—*Municipal Election—Subscription to Nomination Paper—38 & 39 Vict., c. 40, s. 1 (2).*—At a municipal election where there were four vacancies, a burgess subscribed four nomination papers

which were duly delivered to the town clerk, and subsequently he subscribed another paper, which was also duly delivered: *Held* that the first four papers were valid, and the last only invalid under sec. 1, sub-sec. 2 of Municipal Elections Act, 1876.—*Burgoyne v. Collins*, L.R. 8 Q.B.D. 450; 51 L.J. Q.B. 335.

Fishery:—

- (i.) **Q. B. Div.**—*Non-tidal River*—*Public Right*—*Profit à prendre*.—The public have no right to fish in a non-tidal navigable river. Such right cannot be acquired by custom.—*Pearce v. Scotcher*, 46 L.T. 342.
- (ii.) **Q. B. Div.**—*Tidal River*—*Reasonable Claim of Right*—*Jurisdiction of Justices*.—A mere claim by a man of a right to fish as one of the public, supported by very slight evidence, is not such a reasonable claim as to oust the jurisdiction of the justices. A river is a tidal river in such parts only as are within the regular ebb and flow of the highest tides.—*Reece v. Miller*, L.R. 8 Q.B.D. 626; 51 L.J. M.C. 64.

Highway:—

- (iii.) **Q. B. Div.**—*Extraordinary Traffic*—41 & 42 Vict., c. 77, s. 23.—Appellants conveyed manure by means of a traction-engine and trucks along a road which had not been prepared for the weight of the engine, and which was in consequence rendered unfit for use. The use of traction-engines was common in the neighbourhood, but not upon this road: *Held* that this constituted extraordinary traffic within sec. 23 of Highways and Locomotives Act, 1878.—*Regina v. Ellis*, L.R. 8 Q.B.D. 406.

Husband and Wife:—

- (iv.) **P. D. A. Div.**—*Divorce*—*Desertion*—*Conduct conducing to Adultery*.—*Semble* that the conviction of a wife for an offence against the criminal law is no ground for the refusal of conjugal rights by the husband, and if such refusal conduces to her adultery, the Court will not grant the husband a dissolution of the marriage.—*Williamson v. Williamson*, L.R. 7 P.D. 76; 51 L.J. P.D.A. 54; 30 W.R. 616.
- (v.) **Ch. Div. F. J.**—*Divorce*—*Dower*.—Right to dower is barred by a decree for dissolution of marriage obtained by the wife on the ground of cruelty and adultery.—*Frampton v. Stephens*, 51 L.J. Ch. 562; 46 L.T. 617; 30 W.R. 726.
- (vi.) **C. A.**—*Divorce*—*Rectification of Settlement*—22 & 23 Vict., c. 61, s. 5; 41 Vict., c. 19, s. 3.—On a dissolution of a marriage the power of the Court to make orders as to the application of settled property is a discretionary power of the most absolute kind; and the Court in exercising the power should take into consideration the guilt of either party, and may exclude the guilty party from the benefit of any provision.—*Wigney v. Wigney*, 46 L.T. 441; 30 W.R. 722.
- (vii.) **Ch. Div. K. J.**—*Separation Deed*—*Custody of Children*—*Decision of Arbitrator*.—Proceedings in the Divorce Court were compromised on certain terms providing for the execution of a deed of separation to contain "all usual clauses as to access to children, &c.," and to be settled by a counsel to be agreed upon: *Held* that the arbitrator selected to settle the deed had exceeded his powers in giving the wife the custody of the children during certain periods in the year.—*Evershed v. Evershed*, 46 L.T. 690; 30 W.R. 732.
- (viii.) **C. A.**—*Separation Deed*—*Subsequent Adultery*—*Judicial Separation* 20 & 21 Vict., c. 85, s. 17.—By a separation deed between husband and wife made in consequence of the husband's adultery, he agreed to pay her an annual sum as alimony, and she agreed not to bring any suit to compel him to allow her any further sum. After the separation the

husband committed adultery, and the wife obtained a judicial separation : *Held* that, although the husband had recently become much wealthier than he formerly was, the wife was not entitled to claim alimony from him beyond the agreed amount. Decision of Hannen, P. (see L.R. 7 P.D. 77) reversed.—*Gandy v. Gandy*, 51 L.J. P.D.A. 41; 46 L.T. 607; 80 W.R. 678.

- (i.) **P. D. A. Div.—Separation Deed—Subsequent Adultery.**—Where husband and wife had been separated by deed in which the wife engaged not to avail herself of any act anterior to its date, and the wife subsequently petitioned for a divorce, establishing adultery and cruelty committed before the deed, the Court declined to hold that the cruelty was revived by subsequent adultery.—*Rose v. Rose*, 30 W.R. 796.
- (ii.) **C. A.—Separation Deed—Subsequent Co-habitation.**—In 1862 defendant and his wife executed a separation deed which provided that the wife should be allowed to live apart from her husband and should have absolute control over her own property, and the husband covenanted to pay her £100 a year during their joint lives so long as she should live chastely. They resumed co-habitation in 1872 and separated again in 1879 : *Held* that the deed was not rescinded by the subsequent co-habitation, and was a good defence to an action for the price of necessities supplied to the wife since 1879.—*Negus v. Forrester*, 46 L.T. 675; 30 W.R. 671.
- (iii.) **C. A.—Settlement—Wife's Separate Property—Jewelry.**—A marriage settlement contained a provision that all property to which the wife or her husband in her right at any time during the coverture should become entitled, should be held on certain trusts, except jewels, &c., which it was declared should belong to the wife for her separate use : *Held* that jewelry presented to the wife before her marriage was her separate property, and could therefore be taken in execution upon a judgment against the wife alone for a debt contracted before marriage.—*Mercier v. Williams*, 30 W.R. 720.

Insurance :—

- (iv.) **Q. B. Div.—Fire Insurance—Fire after Contract and before Sale—Insurable Interest.**—A vendor contracted to sell a house to a purchaser, which had been insured by the vendor with plaintiffs against fire. After date of contract and before completion the house was damaged by fire, and the vendor received the insurance moneys from plaintiffs. *Held* that plaintiffs could not recover back the money, either for themselves or as trustees for the purchaser.—*Castellain v. Preston*, L.R. 8 Q.B.D. 618; 46 L.T. 569; 30 W.R. 597.

Justice of Peace :—

- (v.) **Q. B. Div.—Disqualifying Interest—Urban Authority—38 & 39 Vict., c. 55, s. 258.**—Although the mere fact that a justice is a member of any local authority does not disqualify him from acting in cases arising under the Public Health Act, 1875, yet if he be present when the prosecution is resolved upon he cannot sit and determine the case.—*Regina v. Lee*, 30 W.R. 750.

Landlord and Tenant :—

- (vi.) **C. A.—Lease—Covenant—Breach—Re-entry—Penal Rent.**—Decision of Q. B. Div. (see iii., p. 59) affirmed.—*Weston v. Managers of Metropolitan Asylum District*, 51 L.J. Q.B. 399; 46 L.T. 580; 30 W.R. 623.
- (vii.) **C. A.—Lease—Covenant against Sub-letting—Forfeiture—Covenant to leave Hay and Straw—Bankruptcy of Lessee.**—A lease contained a covenant against sub-letting, and reserved a right of re-entry in case of breach of covenant, or bankruptcy by the tenant. The tenant sub-let

without landlord's knowledge, and the sub-tenant became bankrupt, and the landlord took possession. The lease contained a covenant by the tenant to leave on the premises the hay and straw grown during the last year of the tenancy thereon, on being paid for the same: *Held* that the trustee in bankruptcy of the under-tenant could not recover the value of the hay and straw left on the premises from the landlord.—*Silcock v. Farmer*, 46 L.T. 405.

- (i.) **C. A.**—*Lease—Reservation of Minerals—Surface Flints—Custom.*—Decision of Kay, J. (see v., p. 59) affirmed.—*Tucker v. Linger*, 30 W.R. 578.

Lands Clauses Act:—

- (ii.) **Ch. Div. V. C. H.**—*Payment out of Deposit—Service of Petition—Lands Clauses Act, 1845, s. 87.*—When a corporation has paid a deposit into Court on entering on lands under the provisions of the Lands Clauses Act, 1845, and has afterwards concluded the purchase by contract, the deposit will be returned without service of the petition on the vendor, if his consent in writing to the prayer of the petition be obtained.—*Ex parte Mayor of Huddersfield, Re Dyson*, 46 L.T. 730.
- (iii.) **Ch. Div. V. C. H.**—*Re-investment—Purchase-money of Glebe Lands—Rent Charge.*—*Held* that money paid into Court under the Lands Clauses Act in respect of the purchase of glebe lands which were subject to a rent charge created under the Land Drainage Act, 1849, could not be applied in repaying the future payments of the rent-charge; nor was it cash under the control of the Court within 22 & 23 Vict., c. 38, s. 10.—*Ex parte Rector of Kirkmeaton*, L.R. 20 Ch. D. 203; 51 L.J. Ch. 581; 30 W.R. 539.
- (iv.) **Ch. Div. N. J.**—*Re-investment—Repair of House.*—Leaseholds forming part of settled property having been purchased compulsorily under the Act and the money consisting of £160 paid into Court, on the petition of the trustee and the tenant for life of two-thirds of the trust estate, the Court sanctioned the expenditure of £50 thereout on the putting a house on the property into permanent repair.—*Re Aldred's Estate*, 46 L.T. 379; 30 W.R. 777.
- (v.) **Ch. Div. V. C. H.**—*Superfluous Lands—Sale of—Restrictive Covenants.*—There is nothing in the provisions of the Lands Clauses Act, 1845, to deprive a railway company selling under the Act, from imposing such restrictions on the user of the lands sold as may be most beneficial to them.—*Re Higgins & Hitchman*, 30 W.R. 700.
- (vi.) **Q. B. Div.**—*Umpire—Time for Making Award—8 Vict., c. 18, s. 28.*—The three months allowed by the 23rd section of the Lands Clauses Act, 1845, for an umpire to make his award, is to be calculated from the date of his appointment.—*Re Pullen & Liverpool Corporation*, 51 L.J. Q.B. 285; 46 L.T. 391.

Licensed House:—

- (vii.) **Q. B. Div.**—*Selling without License—Fines or Imprisonment—35 & 36 Vict., c. 94, s. 3—42 & 43 Vict., c. 49, s. 21 (3).*—A conviction under sec. 3 of Licensing Act, 1872, imposing a penalty exceeding £5, and in default of payment imprisonment, is bad. Sec. 21, sub-sec. 3 of Summary Jurisdiction Act, 1879, does not give justices power to order imprisonment for non-payment of the penalty without first ordering a distress.—*Re Clew*, L.R. 8 Q.B.D. 511; 30 W.R. 704; *Regina v. Clew*, 46 L.T. 482.

Lord Mayor's Court:—

- (viii.) **Q. B. Div.**—*New Trial—Practice—20 & 21 Vict., c. clvii, ss. 10, 22.*—Where a rule has been obtained to enter a nonsuit or for a new trial in

the Mayor's Court, London, under sec. 22 of 20 & 21 Vict., c. clvii., the unsuccessful party cannot move the Divisional Court under sec. 10, even with the judge's leave?—*Mears v. Chittick*, L.R. 9 Q.B.D. 35.

Lunacy:—

- (i.) **C. A.**—*Allowance to Next-of-Kin—Cousins.*—An application for an allowance to one of a lunatic's next-of-kin, who was a cousin, refused, though applicant was a very fit object of charity.—*Re Evans*, 30 W.R. 645.
- (ii.) **Ch. Div. F. J.**—*Lunatic Devisee—Administration Action by—Sale—Trustee Extension Act, 1852, s. 1.*—A lunatic to whom testator had devised real estate subject to payment of debts, and his committee, with the sanction of the Master in Lunacy, brought an action in the Chancery Division for administration of testator's estate, and an order for sale of the real estate was made: Held that it was not necessary to obtain an order in lunacy for the lunatic and his committee to convey on the sale of the property, but that the lunatic was a trustee within sec. 1 of Trustee Extension Act, 1852, and his committee could be appointed to convey.—*Stamper v. Stamper*, 46 L.T. 372.
- (iii.) **C. A.**—*Lunatic Residing Abroad—Presence dispensed with at Inquiry—Service of Order—Next-of-Kin—Liberty to Attend.*—An inquiry being directed as to the lunacy of an alleged lunatic resident abroad, and whose presence was dispensed with, service of the order to that effect was directed to be made on the lunatic, and the person with whom she was living, by registered letter. The question whether or not next-of-kin are to have liberty to attend such proceedings is to be left to the discretion of the Master.—*Re Lanworne*, 46 L.T. 668; 30 W.R. 759.
- (iv.) **C. A.**—*Transfer of Fund—Trustee Relief Act.*—Where a lunatic is entitled to a fund paid into Court under the Trustee Relief Act, a petition may be presented in Chancery under that Act and in Lunacy, and the Court has power to make an immediate order for the transfer of the fund to the lunatic's account.—*Re Tate*, L.R. 20 Ch. D. 135.

Master and Servant:—

- (v.) **Q. B. Div.**—*Injury to Workman—Liability of Employer—Right to Contract out of Act—43 & 44 Vict., c. 42, s. 1.*—There is nothing in the Employers' Liability Act, 1880, to prevent a workman from contracting himself out of its provisions.—*Griffiths v. Earl of Dudley*, 30 W.R. 797.
- (vi.) **Q. B. Div.**—*Injury to Workman—Negligence of Fellow-workman—43 & 44 Vict., c. 42, s. 1.*—A workman employed by a firm of builders was injured by a pail falling on him, the cause of the accident being the negligence of another workman who was employed to assist in hoisting the pail by means of a pulley: Held that the employers were not liable in an action for damages under Employers' Liability Act, 1880.—*Robins v. Cubitt*, 46 L.T. 535.
- (vii.) **C. A.**—*Injury to Workman—Notice of—43 & 44 Vict., c. 42, ss. 4, 7.*—The notice of injury sustained by a workman, which is to be given to an employer under Employers' Liability Act, 1880, must contain in writing all the particulars required by sec. 7, in order to fulfil the condition precedent to bringing an action required by sec. 4.—*Keen v. Millwall Dock Co.*, L.R. 8 Q.B.D. 482; 51 L.J. Q.B. 277; 46 L.T. 472; 30 W.R. 503.
- (viii.) **Q. B. Div.**—*Injury to Workman—Defective Notice—Amendment—43 & 44 Vict., c. 42, ss. 4, 7.*—A notice given to an employer under secs. 4 and 7 of Employers' Liability Act, 1880, omitted to state the cause of the injury: Held that this was a defective notice which might be amended under the last clause of sec. 7.—*Stone v. Hyde*, L.R. 9 Q.B.D. 76; 46 L.T. 481; 30 W.R. 816.

- (i.) **Q. B. Div.—Injury to Workman—Railway Company—Liability—48 & 44 Vict., c. 43, s. 1 (5).**—H. was in the employ of a railway company as "capstan-man," and in performance of his duty propelled a series of trucks along a line of rails in a goods station by means of a fixed engine: *Held* that there was evidence to warrant a jury in finding that H. was a person who had charge or control of a train upon a railway, within sec. 1, sub-sec. 5, of Employers' Liability Act, 1880.—*Cos v. G. W. Rail. Co.*, L.R. 9 Q.B.D. 106; 80 W.R. 816.

Metropolitan Management:—

- (ii.) **Q. B. Div.—Appeal to Quarter Sessions—18 & 19 Vict., c. 120, s. 231; 25 & 26 Vict., c. 102, s. 75.**—An appeal to Quarter Sessions will not lie against the order of a justice directing the demolition of buildings under sec. 75 of Metropolis Local Management Amendment Act, 1862.—*Regina v. Middlesex Justices*, L.R. 9 Q.B.D. 41; *Ex parte Elsdon*, 51 L.J. M.C. 94; 80 W.R. 667.
- (iii.) **Q. B. Div.—Improvement Scheme—Provisional Award—Transfer of Ownership—38 & 39 Vict., c. 36.**—The Metropolitan Board of Works served a notice on B., the owner of certain houses, stating that they would be taken compulsorily under the Artizans and Labourers Dwellings Improvement Act, 1875, and an arbitrator was appointed who made his provisional award, and four months afterwards his final award: *Held* that the ownership in the meantime remained in B., who continued liable for expenses incurred in consequence of the houses being in a dangerous state.—*Barnet v. Metropolitan Board of Works*, 46 L.T. 384.
- (iv.) **C. A.—New Street—Paving Expenses—Bridge over Railway—Land Abutting—25 & 26 Vict., c. 102, s. 77.**—A railway company built a bridge over its line with side walls supported by piers standing on the slopes of the cutting through which the line ran. A road was carried over the bridge, which became a new street within the Metropolitan Management Acts, and the district Board of Works paved the street: *Held* that the company was liable to contribute to the expenses of paving as owner of land abutting on such street.—*Hackney Board of Works v. Great Eastern Rail. Co.*, 51 L.J. M.C. 57; 46 L.T. 679; 80 W.R. 765.
- (v.) **C. A.—Pavement—Iron Flap in—Liability of Vestry for Non-repair—18 & 19 Vict., c. 120, ss. 96, 116.**—*Held* that the vestry were owners of an iron flap let into the pavement of a street to cover a metre used by them in watering the streets, and were liable for the non-repair of the flap.—*Blackmore v. Mile End Vestry*, 80 W.R. 740.

Mines:—

- (vi.) **Ch. Div. V. C. H.—Leasing Powers—Mining Lease—Removal of Pillars in Coal Mine—Injunction.**—Lands were devised in strict settlement with power to the tenants for life to grant mining leases for such terms and on such conditions as should seem reasonable and proper. M., the first life tenant granted a lease of collieries in the property to O. for ninety-nine years at a peppercorn rent, the lease containing the usual clauses as to the working of the collieries and providing that pillars should be left in the mine, and should not be removed without the consent in writing of M. or his assigns, or the person or persons for the time being entitled to the mines. M. having mortgaged his life interest, conveyed it to the persons entitled in remainder, who, during M.'s life, brought an action to restrain O. from working out the pillars, and denying the validity of the lease: *Held* that the lease was a valid execution of the power, and that the plaintiffs were entitled to have O. restrained from removing the pillars.—*Moslyn v. Lancaster*, 46 L.T. 648.

- (i.) **Ch. Div. K. J.**—*Right of Support—Subjacent Owners—Restrictive Covenant.*—A. leased certain coal seams to B., who covenanted to leave unworked a barrier of coal dividing his mine from an old mine full of water, and the lease provided that nothing therein contained should prevent A. from working any coal under the seams demised, but that in doing so the working of the seams demised should not be unnecessarily interfered with, and compensation for interference should be made to B. Subsequently A. leased to the M. company seams underlying those let to B. The company threatened to work underneath the barrier between B.'s mine and the old mine: *Held* that B. was entitled to an injunction restraining the company from working the coal so as to cause the barrier to sink or crack so as to let in water.—*Mundy v. Duke of Rutland*, 46 L.T. 477; 30 W.R. 635.

Mortgage:—

- (ii.) **C. J. B.**—*Attornment Clause—Distress under—Bankruptcy of Mortgagor.*—A mortgage to a building society contained a provision that in case of default in payment of the monthly instalments, and the mortgagor should be then in occupation of the premises, he should be tenant thereof from month to month at a monthly rent equal to the amount of the monthly instalments. The mortgagor made default, and the society distrained for rent under the attornment clause on several occasions, the later of such distresses being levied subsequent to the bankruptcy of the mortgagor: *Held* that the society was entitled to retain the proceeds of the sales of the distresses against the trustee in bankruptcy of the mortgagor.—*Ex parte Isherwood, Re Knight*, 46 L.T. 539.
- (iii.) **C. A.**—*Book Debts.*—Decision of V. C. B. (see vii., p. 30) reversed.—*Browne v. Fryer*, 46 L.T. 636.
- (iv.) **H. L.**—*Foreclosure Absolute*—3 & 4 Will. IV., c. 27; 1 Vict., c. 28.—An action was brought by a legal mortgagee within twenty years next after an order of foreclosure absolute, to recover possession of the land: *Held* not barred by the Statutes of Limitations, though more than twenty years had elapsed since the legal estate in the land had been conveyed to the mortgagee, and since the last payment of principal or interest under the mortgage.—*Pugh v. Heath*, L.R. 7 App. 235; 51 L.J. Q.B. 367; 46 L.T. 321; 30 W.R. 553.
- v.) **Ch. Div. F. J.**—*Foreclosure—Infant—Day to Show Cause—Trustee Act, 1850, ss. 29, 30.*—An infant defendant in an action to foreclose a legal mortgage is still entitled to have a day given him on which to show cause against the judgment of foreclosure.—*Gray v. Bell*, 46 L.T. 521; 30 W.R. 606.
- (vi.) **Ch. Div. K. J.**—*Foreclosure—Sale—Conveyancing Act, 1881, s. 25 (2).*—The Court has jurisdiction under sec. 25, sub-sec. 2, of Conveyancing Act, 1881, to direct a sale in a foreclosure action without plaintiff's consent, although the mortgaged property in question is only an equity of redemption.—*Cripps v. Wood*, 51 L.J. Ch. 584.
- (vii.) **C. A.**—*Fraud—Personation—Rights of Insolvent Persons.*—Decision of Fry, J. (see ix., p. 30), affirmed.—*Cooper v. Vesey*, 30 W.R. 643.
- (viii.) **Ch. Div. F. J.**—*Good-will of Public-House—Transfer of License.*—When the good-will of a public-house has been mortgaged, the mortgagee is entitled to have the existing license transferred to him by the mortgagor.—*Rutter v. Daniel*, 46 L.T. 684; 30 W.R. 724.
- (ix.) **Ch. Div. K. J.**—*Power of Sale—Improper Sale—Solicitor.*—E. acted as solicitor for both parties in the mortgage of a reversionary interest, and inserted in the deed a power of sale exercisable without notice on

default of payment of interest for a month. The interest being in arrear E., without notice to the mortgagor, sold the property. At the time of sale the life tenant was in very delicate health and died before the sale was completed: *Held*, on the evidence, that the sale was an improper exercise of the power and was at a considerable under-value, and must therefore be set aside; and that E. was guilty of negligence in not explaining to the mortgagor the nature of the power of sale.—*Bettys v. Maynard*, 46 L.T. 766; 30 W.R. 798.

- (i.) **Ch. Div. N. J.**—*Power of Sale—Mortgage to Building Society—Purchase by Secretary.*—Property mortgaged to a Building Society was sold under their power of sale by public auction, and purchased by the secretary of the Society: *Held* that such purchase would be set aside on the mortgagor redeeming.—*Martinson v. Clowes*, 30 W.R. 795.
- (ii.) **Ch. Div. K. J.**—*Power of Sale—Resulting Trust.*—Where a mortgagee exercises his power of sale *bond fide* for the purpose of realizing his debt, the Court will not interfere though the sale be very disadvantageous, unless the price is so low as to be evidence of fraud. A mortgagee selling under his power is not a trustee for the mortgagor, except as to the balance of the purchase-money, even though the mortgage be in the form of a trust for sale.—*Warner v. Jacob*, L.R. 20 Ch. D. 220; 46 L.T. 656; 30 W.R. 731.
- (iii.) **Ch. Div. V. C. H.**—*Priority—Notice to Trustees.*—A mortgagee of a reversionary estate gave notice to the trustees of the estate, whereby he referred to his mortgage deed by a wrong date, but otherwise correctly described it: *Held* that the notice was sufficient, and entitled him to priority over a prior incumbrancer who had given subsequent notice.—*Whittingstall v. King*, 46 L.T. 520.
- (iv.) **C. A.**—*Re-conveyance—Second Mortgage—Conveyancing Act, 1881, s. 15.*—When there is a second mortgagee, a mortgagor who pays off the first mortgage is not entitled under sec. 15 of Conveyancing Act, 1881, to require the mortgagee to assign the debt and convey the property to a third person.—*Teevan v. Smith*, 30 W.R. 716.
- (v.) **Ch. Div. F. J.**—*Redemption—Sale—Conveyancing Act, 1881, s. 25.*—In a redemption action the Court has power, under sec. 25 of Conveyancing Act, 1881, upon an interlocutory application by a person interested in the equity of redemption, at any time before trial, to order a sale, and where the reserved price fixed is sufficient to cover all prior mortgages, will give the conduct of the sale to such person.—*Woolley v. Colman*, 46 L.T. 737; 30 W.R. 769.
- (vi.) **P. C.**—*Release of Equity of Redemption—Suit to Set Aside—Misrepresentation.*—An insolvent who had obtained his discharge and taken a conveyance from the official assignee of all the estates vested in him under the insolvency, brought an action to set aside a release by the assignee of the insolvent's equity of redemption of a mortgage on the ground of misrepresentation or mistake, and for accounts against the mortgagee: *Held* that the onus was upon plaintiff to prove the falsehood of the representations, as he was *prima facie* bound by the admissions of the assignee, who had admitted in the deed of release, the truth of the representations.—*Melbourne Banking Corporation v. Brougham*, L.R. 7 App. 307; 46 L.T. 608.

Municipal Law:—

- (vii.) **Ch. Div. F. J.**—*Local Board—District Constituted Borough—Vesting of Property—38 & 39 Vict., c. 55, s. 310.*—The expression "Council of the Borough" in sec. 310 of Public Health Act, 1875, means the mayor, aldermen and burgesses acting by their Council, and the section vests in

such corporation not only property expressly vested in the Local Board by the Act, but also property coming to the Local Board after the passing of the Act, by the exercise of its powers under the Act.—*Hyde Corporation v. Bank of England*, 30 W.R. 790.

- (i.) **C. A.**—*Paving Expenses—Right of Action for*—10 & 11 Vict., c. 34.—In 1857 a local Act for the borough of P. incorporated the Towns Improvement Clauses Act, 1847, with the proviso that sec. 53 should be construed as if the word owners were substituted for occupiers. By the Local Government Supplemental Act, 1864, sec. 156, of the Act of 1847, and the succeeding sections dealing with private improvement expenses were struck out of the Local Act: *Held* that the effect of this was to repeal the last words of sec. 53, and that consequently an action would lie for expenses incurred under that section, as no special remedy for their recovery existed.—*Mayor of Portsmouth v. Smith*, 46 L.T. 552.

- (ii.) **C. A.**—*Rate—Rating Owner—Unoccupied House*—38 & 39 Vict., c. 55, s. 211.—Decision of Q. B. Div. (see ii., p. 62) affirmed.—*Regina v. Barclay*, L.R. 8 Q.B.D. 486; 51 L.J.M.C. 47; 46 L.T. 335; 30 W.R. 672.

Negligence:—

- (iii.) **Q. B. Div.**—*Action by Relatives of Person Killed—Pecuniary Interest*—9 & 10 Vict., c. 93, s. 2.—In an action brought under Lord Campbell's Act by a father for damages for the loss of his son, it was proved that the son had, five years before his death, contributed for six months to his father's support while out of work, and since then he had given no pecuniary assistance: *Held* that there was evidence of a pecuniary interest on the part of the father in the son's life.—*Hetherington v. North-Eastern Rail. Co.*, 30 W.R. 797.
- (iv.) **Q. B. Div.**—*Injury to Person—Damage to Estate—Action by Administratrix*—Plaintiff sued as administratrix of her late husband, who, through defendant's negligence was run over by an engine and sustained injuries which prevented him from earning wages and caused medical expenses, whereby his personal estate was diminished in value: *Held* that the action would not lie.—*Pulling v. G. E. Rail. Co.*, L.R. 9 Q.B.D. 110; 30 W.R. 798.
- (v.) **Q. B. Div.**—*Injury to Person—Stranger wrongfully on Premises—Licensor and Licensee—Contract*—Defendants let a dock to shipowners and supplied for hire and fixed staging round the ship in order that it might be painted. Plaintiff, employed by G., who had contracted with the shipowners to paint the ship, was injured while so employed, through a defect in the staging: *Held* that he could not recover damages from defendants.—*Heaven v. Pender*, 30 W.R. 749.
- (vi.) **Q. B. Div.**—*Landlord and Tenant—Obligation to Fence—Licensee*—A landlord of a house let out in apartments, allowed the tenants to use the roof, which was flat and surrounded by a wooden rail, for the purpose of drying linen: *Held* that the mere license to the tenants to use the roof imposed no duty on the landlord to keep the rail in repair.—*Ivey v. Hedges*, L.R. 9 Q.B.D. 80.

Nuisance:—

- (vii.) **C. A.**—*Reversioner—Permanent Nuisance—Trespass—Right to Sue*—Decision of Fry, J. (see vii., p. 81) affirmed.—*Cooper v. Crabtree*, 51 L.J.Ch. 544; 30 W.R. 649.

Office, Tenure of:—

- (viii.) **Ch. Div. K. J.**—*Remembrancer of City of London—Annual Election*—Plaintiff was elected Remembrancer of the City of London under the terms of a Standing Order of the Court of Common Council that the

office should be held subject to annual election *Held* that there was nothing in the nature of the office or the circumstances of the case to induce the Court to decide that plaintiff held the office *deus ex bene gesserit*—*Roberts v Mayor of London*, 46 L.T. 573; 30 W.R. 637.

Partition :—

- (i) **Ch. Div. V. C. H.**—*Infants—Mortgagee*—In a partition action in which plaintiffs were infants suing by their next friend, and the defendant was entitled to one share in the property and was mortgagee in fee in possession of the entirety, the Court held that plaintiffs were entitled to maintain the action, and on their request ordered a sale subject to defendant's mortgage—*Watts v Bingley*, 30 W.R. 698
- (ii) **Ch. Div. F. J.**—*Mortgagor—Sale—Conveyancing Act, 1881, s 25 (2)*. A tenant in common, who has mortgaged his share to another tenant in common, cannot enforce a partition or sale of the whole property against the will of the mortgagee, except upon the terms of paying off the mortgage, his right in this respect being unaffected by sec. 25, sub sec 2 of the Conveyancing Act, 1881—*Gibbs v Haydon*, 30 W.R. 726
- (iii) **Ch Div V C B**—*Trust for Sale—31 & 32 Vict, c 40, s 4*—The Court has no jurisdiction, at the instance of the tenant for life and reversioners *sui juris* and beneficially interested to the extent of a moiety, to direct a sale or partition under the Partition Acts, of property over which there is a discretionary power of sale vested in trustees—*Biggs v Peacock*, L.R. 20 Ch D 200, 51 L.J. Ch 555, 46 L.T. 582, 30 W.R. 605

Partnership :—

- (iv) **C. A**—*Dissolution—Return of Premium*—In an action for dissolution of partnership *Held* that the partner who paid a premium was entitled to a return of a proportionate part, though he had failed to furnish further capital according to the articles of partnership, and had, in a cross action by the other partner, made charges of misconduct against him which he was unable to sustain—*Brewer v Yorks*, 46 L.T. 289.

Patent :—

- (v) **Ch Div F J**—*Anticipation—Prior Publication*—A description of a telephonic instrument was contained in a scientific journal published in Germany, and written in German. Copies of the journal were in the library of the Patent Office, and of the Institute of Civil Engineers in London *Held* that there was a sufficient publication to anticipate a later patent—*United Telephone Co v Harrison*, 46 L.T. 620, 30 W.R. 724
- (vi) **Ch. Div. K. J.**—*Infringement—Account of Profits—Proof in Liquidation—Bankruptcy Act, 1869, s 31*—The amount found to be due on taking the account of profits made by a person infringing a patent is not a demand in the nature of unliquidated damages within sec. 31 of Bankruptcy Act, and may be proved for in the liquidation of the infringer—*Watson v Holliday*, 30 W.R. 747

Poor Law :—

- (vii.) **Q. B. Div.**—*Bastardy—Appeal—7 & 8 Vict, c 101, s 4, 8 & 9 Vict, c 10, s 3, 42 & 43 Vict, c 49*—An appeal against an order in bastardy may be brought either on the conditions prescribed by the Bastardy Acts, or on those prescribed by the Summary Jurisdiction Act, 1879.—*Regina v. Montgomeryshire Justices*, 51 L.J. M.C. 96.

- (i.) **Q. B. Div.—Bastardy—Maintenance Order—Enforcement of—Discretion of Justices.**—An order had been obtained by a single woman for the maintenance of her bastard child, and the woman afterwards married: *Held* by Grove, J., that the justices might exercise their discretion as to enforcing the order against the putative father; by Huddleston, B., that the justices were bound to enforce the order.—*Davies v. Evans*, 46 L.T. 418; 30 W.R. 548.
- (ii.) **Q. B. Div.—Rate—Joint-Stock Company—Liquidator.**—The official liquidator of a joint-stock company which is being wound-up is not personally liable for the rates assessed on the premises of the company, which he occupies only as official liquidator.—*Regina v. Curzon*, 30 W.R. 521.
- (iii.) **Q. B. Div.—Rate—Publication—Extra-parochial Place—17 Geo. II., c. 3, s. 1—7 Will. IV., & 1 Vict., c. 45, s. 2.**—The overseer of a parish which, before the passing of 20 Vict., c. 19, was an extra-parochial place, made a rate for the relief of the poor, but did not publish any notice of the rate within the parish, in which there was no church or chapel: *Held* that the rate could not be collected.—*Regina v. Dyott*, L.R. 9 Q.B.D. 47; 30 W.R. 799.
- (iv.) **Q. B. Div.—Settlement—Residence while under Sixteen—39 & 40 Vict., c. 61, ss. 34, 35.**—A pauper whose settlement by birth was in appellant's union, resided in another union, while under sixteen, for the term and in the manner required by sec. 34 of Divided Parishes Act, 1876, to acquire a settlement by residence: *Held* that he had acquired a settlement under sec. 34.—*Wolstanton Union v. Northwich Union*, 46 L.T. 528.

Power of Appointment:—

- (v.) **Ch. Div. V. C. B.—Special Power—Will by Survivor during life of Co-appointor.**—A sum of money was settled after the death of A. and B., in trust for their children as A. and B. during their joint lives by deed, or as the survivor by deed or will, should appoint: *Held* that the power was not well exercised by a will made by A., who survived B., during B.'s lifetime.—*Re Moir's Settlement Trusts*, 46 L.T. 723.

Practice:—

- (vi.) **Ch. Div. F. J.—Administration Action—Wilful Default—Further Accounts.**—In an administration action by a residuary legatee, if wilful default is charged, an order for accounts and inquiries on the footing of wilful default may be made at any stage in the action, though not made on the original hearing.—*Luke v. Tonkin*, 46 L.T. 684.
- (vii.) **C. A.—Appeal—Action remitted to County Court—New Trial—19 & 20 Vict., c. 108, s. 26—Judicature Act, 1873, s. 45.**—Where an action brought in the High Court has, after issue joined been remitted to a County Court, an appeal to the Court of Appeal will lie, without special leave, from the refusal of a Divisional Court to grant a new trial.—*Babbage v. Coulburn*, 46 L.T. 515.
- (viii.) **C. A.—Appeal—Compulsory Reference—Judicature Act, 1873, s. 57.**—The Court of Appeal has jurisdiction to review the order made by a judge under sec. 57 of Judicature Act, 1873, when he has ordered a compulsory reference of issues of fact in an action; but the Court will only interfere where it clearly appears that the judge has wrongly exercised his discretion.—*Ormerod v. Todmorden Joint Stock Mill Co.*, L.R. 8 Q.B.D. 664; 51 L.J. Q.B. 348; 46 L.T. 669; 30 W.R. 805.
- (ix.) **C. A.—Appeal—Interpleader—Summary Order—23 & 24 Vict., c. 126, ss. 14, 17.**—Where a judge at Chambers refers an interpleader summons to the Court, and the Court gives judgment and makes an order thereon without directing an issue, no appeal can be brought.—*Turner v. Bridgett*, L.R. 9 Q.B.D. 65; 51 L.J. Q.B. 377; 46 L.T. 517; 30 W.R. 586.

- (i.) **C. A.—Appeal—Security for Costs—Failure to give Security.**—Where an intending appellant, having been ordered to give security for costs within a certain time, has failed to do so, his right of appeal is gone for ever, though the usual period for appealing has not expired.—*Harris v. Fleming*, 30 W.R. 555.
- (ii.) **C. A.—Appeal—Special Case—Time—Judicature Act, 1873, s. 19.**—An arbitrator to whom an action had been referred stated a case for the opinion of the Court, asking whether plaintiff had a cause of action, if so the case to go back to the arbitrator, and if not, judgment to be entered for defendant with costs. The Court found that plaintiff had a cause of action: *Held* that an appeal would lie from the finding, and that it was an appeal from a final proceeding.—*Shubbrook v. Tufnell*, 46 L.T. 749; 30 W.R. 740.
- (iii.) **Ch. Div. V. C. H.—Appeal from Chambers.**—Where parties are desirous of appealing from the decision of a judge at Chambers, that desire should be stated at the time. There is generally no need that the matter should be mentioned again in Court.—*Anderson v. Butler's Wharf Co.*, 30 W.R. 723.
- (iv.) **C. A. Attachment—Contempt of Court—Indorsement of Order.**—An order requiring a person to do an act ordered may be sufficiently served to found an application for an attachment for disobedience thereto, although it is not indorsed with notice of the consequence of disobedience, as required by Consolidated Ord. 33, r. 10.—*Thomas v. Palin*, 30 W.R. 716.
- (v.) **Q. B. Div.—Attachment—Notice—Ord. 44, r. 2.**—A writ of attachment must be moved for on notice of motion to the party sought to be attached.—*Ex parte Sheriff of Yorkshire, Eynde v. Gould*, 51 L.J. Q.B. 125.
- (vi.) **C. A. — Conduct of Action — Administration — Palatine Court.** A solicitor who was an assignee of certain legacies of a testator brought an action in the Palatine Court for administration of the estate, charging the trustees with wilful default, and, before he obtained a decree, a decree was submitted to in a second action for administering the same estate brought in the Chancery Division by another legatee. On motion in the second action by the solicitor: *Held* that he was entitled to the conduct of the proceedings under the decree.—*Mellor v. Swire*, 46 L.T. 437; 30 W.R. 525.
- (vii.) **Ch. Div. V. C. H.—Costs—Defaulting Trustee—Bankruptcy—Bankruptcy Act, 1869, s. 41.**—A defaulting trustee, who, after his bankruptcy, is retained as party to a suit for execution of trusts, is entitled to his costs incurred after bankruptcy.—*Clare v. Clare*, 5 L.J. Ch. 553; 36 W.R. 789.
- (viii.) **P. D. A. Div.—Costs—Divorce—Respondent's Costs.**—In a husband's divorce suit the usual order had been obtained for securing the wife's costs of the hearing, and there had been no appeal from the order. The Court refused a subsequent application to order payment in full of the wife's taxed costs.—*Smith v. Smith*, L.R. 7 P.D. 84; 51 L.J., P.D.A. 81; 46 L.T. 696; 30 W.R. 688.
- (ix.) **Ch. Div. N. J.—Costs—Petition under Trustee Relief Act—Rules of Court, 1875 (Costs) Sch., r. 17.**—Trustees who were respondents to a petition under the Trustee Relief Act, and had been tendered two guineas for their costs: *Held* not to be entitled to their costs of appearance, when such appearance was unnecessary.—*Re Sutton*, 46 L.T. 740; 30 W.R. 657.
- (x.) **Q. B. Div.—Costs—Taxation—Attendance of Counsel at Chambers—Rules of Court, 1875 (Costs), r. 14.**—Rule 14 of Special Allowances (Costs), 1875, applies to taxation of costs as between solicitor and client, as well as between party and party.—*Re Chapman*, 51 L.J. Q.B. 337.

- (i.) **Q. B. Div.—Costs—Trial by Jury—Nonsuit—Ambiguity in Judgment—Ord. 55, r. 1.**—In an action tried by a jury where plaintiff succeeds on some issues, and is nonsuited on others, and no order as to costs is made, defendant is entitled to the costs of the issues on which plaintiff is nonsuited. Where there is an ambiguity in the terms of a judgment as to costs, and the master refuses to tax the costs of one of the parties, his proper course is to apply to the judge who tried the case for a direction.—*Abbott v. Andrews*, L.R. 8 Q.B.D. 648; 30 W.R. 779.
- (ii.) **C. A.—Cross-actions—Consolidation—Judicature Act, 1873, s. 24 (7).**—On an application under sec. 24, sub-sec. 7 of Judicature Act, 1873, to consolidate cross-actions, it is in the discretion of the judge to make either party plaintiff; but generally the party on whom the substantial onus of proof lies will be made plaintiff.—*Thomson v. South-Eastern Rail. Co.*, 51 L.J. Q.B. 322; 46 L.T. 513; 30 W.R. 537.
- (iii.) **Q. B. Div.—Discovery—Affidavit of Documents—Recovery of Land—Ord. 31, r. 12.**—In an action for the recovery of land, defendant may be compelled to make an affidavit of documents in his possession relating to the matter in question.—*Wrentmore v. Hagley*, 46 L.T. 741.
- (iv.) **C. A.—Discovery—Interrogatories—Action to Recover Land.**—A plaintiff in an action to recover land upon a legal title has no right to interrogate defendant either as to defendant's title, or to obtain admissions as to the title upon which the plaintiff relies.—*Lyell v. Kennedy*, 51 L.J. Ch. 409; 46 L.T. 752; 30 W.R. 493.
- (v.) **Q. B. Div.—Discovery—Privilege—Shorthand Notes of Evidence.**—During the trial of an issue to determine whether an agreement alleged to have been executed by plaintiff was a forgery or not, plaintiff caused shorthand notes of the evidence to be taken, partly for the purpose of his case in an action which he had brought charging certain persons with conspiracy to defraud and utter the agreement, knowing it to be a forgery: Held that the notes were privileged.—*Nordon v. Defries*, L.R. 8 Q.B.D. 508; 51 L.J. Q.B. 415; 30 W.R. 612.
- (vi.) **Ch. Div. F. J.—Evidence—Commission to Foreign Tribunal.**—When a person, whose evidence was considered likely to be material in determining a question before the Court, and who resided in France, refused to give evidence either by affidavit or before a Commissioner, the Court refused to issue a commission to the French Court to examine him, on the grounds that he could not be properly cross-examined.—*Crofton v. Crofton*, 46 L.T. 522; 30 W.R. 812.
- (vii.) **Q. B. Div.—Evidence—Deposition—Affirmation.**—On the face of a deposition of a witness examined before a Commissioner, it appeared that the witness, objecting to take the oath, affirmed. No objection was taken at the time, but a party present at the examination afterwards applied to have the deposition taken off the file, on the ground that the witness was not entitled to affirm: Held that the objection was taken too late.—*Richards v. Hough*, 51 L.J. Q.B. 361; 30 W.R. 676.
- (viii.) **Ch. Div. F. J.—Information.**—The Attorney-General may properly take proceedings on behalf of the public when acts tending to the injury of the public are being done without lawful authority, though no evidence is produced of the infliction of actual injury.—*Attorney-General v. Shrewsbury Bridge Company*, 46 L.T. 687.
- (ix.) **C. A.—Interpleader—Claim arising after issue settled.**—If, after an interpleader issue has been settled, the execution debtor files a liquidation petition, and the trustee in the liquidation claims the goods in respect of which the issue has been directed, he will be added as a claimant in the trial of the issue.—*Bird v. Matthews*, 46 L.T. 512.

- (i.) **C. A.—Interpleader—New Trial—Ord. 1, r. 3; 40, r. 10.**—On an application for a new trial of an interpleader issue, the Court may, if satisfied that it has all necessary materials, give judgment accordingly.—*Mercier v. Williams*, 30 W.R. 720.
- (ii.) **Ch. Div. C. J.—*Lis Pendens*—Foreign Action—Staying Proceedings.**—There is no authority for holding that the pending of a foreign action is a ground for staying proceedings in this country between the same parties in respect of the same matter.—*McHenry v. Lewis*, 48 L.T. 587.
- (iii.) **C. A.—Married Women—Security for Costs—Ord. 16, r. 8.**—A married woman plaintiff suing without her husband, and possessed of available separate property, will not be required to give security for costs.—*Brown v. North*, L.R. 9 Q.B.D. 52; 51 L.J. Q.B. 365; 46 L.T. 361; 30 W.R. 531.
- (iv.) **Ch. Div. V. C. B.—Parties—Adding Plaintiff—Ord. 50, r. 2.**—A garnishee order was made absolute in favour of judgment creditors of W., attaching a judgment debt recovered by W. against S.: Held that the creditors were entitled to be added as co-plaintiffs in the action by W. against S., and to have notice of all proceedings taken by W.—*Wallis v. Smith*, 51 L.J. Ch. 577; 46 L.T. 478.
- (v.) **Ch. Div. N. J.—Parties—Change of—New Party out of Jurisdiction—Ord. 50, r. 4.**—Upon the death of an accounting party in an action, the Court may, upon *ex parte* application under Ord. 50, r. 4, make an order that the action be continued between the continuing parties and the executor of the will of the deceased party, though such executor is resident in and has proved the will in Ireland.—*Jameson v. Marshall*, 46 L.T. 480.
- (vi.) **Ch. Div. F. J.—Parties—Counter-claim—Death of Counter-claimant—Ord. 50, r. 4.**—Where a counter-claiming defendant has died during the pendency of the action, the Court will revive the counter-claim on application *ex parte* by his legal personal representative.—*Andrew v. Aitkin*, 46 L.T. 689; 30 W.R. 701.
- (vii.) **Ch. Div. F. J.—Parties—Representative Defendant—Ord. 16, rr. 9, 13.**—A bondholder of a railway company brought an action on behalf of himself and all other bondholders except B., who dissented from the action, and who was afterwards added as defendant on his own application. Another bondholder, T., applied to be made defendant, in order that his interests and those of other dissenting bondholders might be represented: Held that T. was entitled to be added as defendant.—*Fraser v. Cooper*, 51 L.J. Ch. 575; 46 L.T. 371; 30 W.R. 654.
- (viii.) **Ch. Div. F. J.—Partnership—Action against—Appearance—Ord. 12, r. 12.**—An action was brought against a firm and one of the partners, and separate defences were put in by the partner for himself and for the firm. No appearance was put in by the firm or by the other partner: Held that the defence of the firm could not be struck out for default of appearance, as a firm has no power to enter an appearance.—*Taylor v. Collier*, 30 W.R. 701.
- (ix.) **C. A.—Partnership—Action against—Judgment—Ord. 9, r. 6; 42, r. 8.**—Where a writ has been issued against a partnership in the name of the firm, judgment can be signed only against the firm, and not against an individual member.—*Jackson v. Litchfield*, L.R. 8 Q.B.D. 474; 51 L.J. Q.B. 327; 46 L.T. 518; 30 W.R. 531.
- (x.) **P. D. A. Div.—Pleading—Amendment—Admiralty Action—Preliminary Act.**—The Court will not allow amendments to be made in Preliminary Acts.—*The Miranda*, 51 L.J. P.D.A. 56; 30 W.R. 615.

- (i.) **Ch. Div. C. J.**—*Pleading—Application for Advice of Court—Signature of Council*—23 & 24 Vict., c. 38, s. 9—*Judicature Act, 1873, s. 100—Ord. 19, r. 4*—Applications for the advice of the Court under sec. 30 of 22 & 23 Vict., c. 35, must be signed by counsel.—*Re Boulton's Trusts*, 51 L.J. Ch. 493; 30 W.R. 596.
- (ii.) **Q. B. Div.**—*Pleading—Counter-claim—Non-delivery of Reply—Judgment on Admissions*—Ord. 40, r. 11.—Plaintiff having made default in delivery of reply to defendant's defence and counter-claim, the Court ordered final judgment to be entered for defendant on both claim and counter-claim under Ord. 40, r. 11.—*Lumsden v. Winter*, L.R. 8, Q.B.D. 650; 51 L.J. Q.B. 413; 30 W.R. 751.
- (iii.) **Ch. Div. F. J.**—*Pleading—Counter-claim—Recovery of Land*—Ord. 17, r. 2.—In a foreclosure action by mortgagee against mortgagor and other persons claiming charges on the property, a defendant counter-claimed that plaintiff had wrongfully entered upon and held possession of certain other land, of which defendant had the legal estate, and also for damages for misrepresentations contained in a lease executed by plaintiff: *Held* that the counter-claim was contrary to Ord 17, r. 2.—*Compton v. Preston*, 30 W.R. 563.
- (iv.) **Q. B. Div.**—*Pleading—Libel—General Denial*—Ord. 19, rr. 17.19.—In an action for libel defendant may not deny generally, in his defence, that he wrote or published the same falsely or maliciously as alleged; but he must set out the facts upon which he relies, either to show justification or privilege.—*Bell v. Lawes*, 51 L.J. Q.B. 359.
- (v.) **Q. B. Div.**—*Pleading—Non-delivery of Reply—Judgment on Admissions*—Ord. 40, r. 11.—Plaintiff in an action for negligence, in which defendant alleged contributory negligence, failed to deliver his reply within the property time, but delivered it subsequently: *Held* that defendant was not entitled to sign judgment on admissions under Ord. 40, r. 11.—*Graves v. Terry*, 30 W.R. 748.
- (vi.) **Q. B. Div.**—*Quarter Sessions—Case Stated*—12 & 13 Vict., c. 45, s. 11.—A case stated for the opinion of the Q. B. Div. undersec. 11 of 12 & 13 Vict., c. 45 should contain a statement of the agreement of the parties that judgment in conformity with the decision of the Court should be entered at Quarter Sessions, as provided by that section.—*Peterborough Corporation v. Overseers of Thurlby*, L.R. 8 Q.B.D. 586.
- (vii.) **Ch. Div. C. J.**—*Reference—Varying Report—Judicature Act, 1873, s. 56*.—Where an action has been referred to an official referee, and a party to the action wishes to have the referee's report varied, if the action is coming on for further consideration he should give notice of motion to vary for a regular motion day, and the motion will, as a matter of course, be ordered to stand over until the further consideration. If the action is not coming on for further consideration, he should apply by motion or summons.—*Burrard v. Callisher*, L.R. 19 Ch.D. 644; 51 L.J. Ch. 510; 46 L.T. 341; 30 W.R. 540.
- (viii.) **Ch. Div. V. C. B.**—*Security for Costs—Plaintiff out of Jurisdiction*.—A plaintiff who resides abroad will not be called upon to give security for costs if he has substantial property, either real or personal, in England.—*Hamburger v. Poetting*, 30 W.R. 769.
- (ix.) **Ch. Div. K. J.**—*Third Party—Costs*—Ord. 16, rr. 17.21.—When a third party is brought into an action by a defendant who claims indemnity against him, the Court cannot determine questions between the third party and defendant without an order directing them to be determined. The Court has power to order the third party to pay to a successful plaintiff costs occasioned by his defence and counter-claim.—*Filler v. Roberts*, 46 L.T. 527; 30 W.R. 595.

- (i.) **Ch. Div. V. C. H.**—*Transfer of Stock—Infant—Trustee Act, 1852, s. 3.*—Stock to which an infant was beneficially entitled stood in the names of the infant and another person: *Held* that the Court could make an order, under Trustee Act, 1852, s. 3, vesting the right to transfer in the other person.—*Re Harwood*, 51 L.J. Ch. 578; 30 W.R. 595.
- (ii.) **C. A.**—*Trial by Jury—Judge's Discretion—Transfer of Action—Ord. 36, rr. 3, 26.*—A judge having refused to allow an action to go to a jury, on the ground that no sufficient reason for doing so was shown to him: *Held* that this was not a proper exercise of his discretion under Ord. 36, rr. 3, 26, and that an appeal would lie: and the action was transferred to the Q. B. Div.—*Hunt v. Chambers*, L.R. 20 Ch.D. 365; 46 L.T. 399; 30 W.R. 527.
- (iii.) **C. A.**—*Trial in County Court—Signing Judgment—19 & 20 Vict., c. 108, s. 26.*—Where an action brought in the High Court is ordered, under 19 and 20 Vict., c. 108, s. 26, to be tried in a County Court, and the County Court Registrar certifies the result to the master's office, judgment may be signed in accordance with such certificate, without taking out a summons for an order to sign judgment.—*Johnson v. Wilson*, 46 L.T. 647.

Principal and Agent:—

- (iv.) **C. A.**—*Negligence—Injury caused by Contractor.*—Defendant employed a competent architect and contractor to pull down and re-build his house, the contract providing that no deviations were to be made therein without the defendant's written consent, and that the contractor was to be responsible for all damage to property caused by negligence or want of care of himself or his workmen. The workmen cut through a party wall so negligently as to cause a neighbouring house to fall and thereby to damage plaintiff's house. The workmen had no authority to cut into the wall: *Held* that defendant was liable to plaintiff for damages.—*Percival v. Hughes*, 51 L.J. Q.B. 388; 46 L.T. 677.

Principal and Surety:—

- (v.) **Ch. Div. V. C. H.**—*Mortgage—Guarantee of Interest—Payment by Surety—Right to Transfer.*—S. mortgaged leaseholds and a life policy to W. to secure £200 and interest, F. joining in the deed as surety for payment of the interest and premiums on the policy, and assigning a policy to W. on his own life. S. subsequently obtained further advances from W., without F.'s knowledge, on the same property. S. made default, and F. paid the arrears and policy premiums: *Held* that F. was entitled to have a transfer to him of all securities comprised in the first mortgage on payment of the moneys due thereon.—*Forbes v. Jackson*, L.R. 19 Ch. D. 615; 30 W.R. 652.

Probate:—

- (vi.) **C. A.**—*Execution of Will—Acknowledgment—1 Vict., c. 26, s. 9.*—There can be no due acknowledgment of a signature of a will under sec. 9 of Wills Act, unless the attesting witnesses see the signature at the time of acknowledgment. Decision of P. D. A. Div. (51 L.J. P.D.A. 36; 30 W.R. 505) affirmed.—*Blake v. Blake*, L.R. 7 P.D. 102; 51 L.J. Ch. 377; 46 L.T. 641.
- (vii.) **P. D. A. Div.**—*Execution of Will—Acknowledgment.*—A. requested B. to prepare a will for him, by which B. was appointed sole executor, and it was signed by A. in the presence of B. and two other persons. B. then sent for C. and P., and requested them in A.'s hearing to attest A.'s signature, which they did: *Held* that the signature had been duly acknowledged.—*In the goods of Bishop*, 30 W.R. 587.

- (i.) **P. D. A. Div.**—*Will of Realty—Appointment of Executor—Married Woman—Arrears of Rent*.—A married woman having a power of appointment over real estate executed the power in favour of herself, and afterwards made a will directing part of the property to be sold to pay legacies, and appointing an executor. There were arrears of rent due at the time of her death: *Held* that the will was entitled to probate.—*Brownrigg v. Pike*, L.R. 7 P.D. 61; 51 L.J. P.D.A. 29; 30 W.R. 567.—
- (ii.) **P. D. A. Div.**—*Will of Realty—Assignee of Heir-at-Law—Leave to Cite*.—20 & 21 Vict., c. 77, s. 61.—In an action for revoking probate on the ground of the invalidity of the will, the Court will not order the assignee of the heir-at-law of testator to be cited.—*Jones v. Jones*, L.R. 7 P.D. 66; 30 W.R. 691.

Public Health:—

- (iii.) **Q. B. Div.**—*Continuing Offence—Penalty*.—38 & 39 Vict., c. 55, s. 156.—*Held* that a person guilty of an offence within sec. 156 of Public Health Act, 1875, continued liable to the penalty imposed by that section so long as the addition to the house constituting the offence was maintained after written notice from the urban authority, notwithstanding that the addition was completed before notice was given.—*Rumball v. Schmidt*, L.R. 8 Q.B.D. 603; 46 L.T. 661.
- (iv.) **Ch. Div. K. J.**—*Expenses incurred by Local Authority—Charge on Premises—Successive Owners*.—38 & 39 Vict., c. 55, ss. 150, 257.—The charge created by sec. 257 of Public Health Act, 1875, for expenses incurred by a local authority for sewerage, &c., for the payment of which the owner of the premises at the time the works are completed is liable, is a charge on the premises in the hands of a subsequent owner, although the local authority have by negligence lost their summary remedy against the previous owner.—*Sunderland Corporation v. Alcock*, 51 L.J. Ch. 546; 46 L.T. 377; 30 W.R. 655.
- (v.) **C. A.**—*Local Authority—Contract not under Seal*.—38 & 39 Vict., c. 55, s. 174.—Where a contract for an amount exceeding £50 has been entered into by a municipal corporation acting as an urban sanitary authority under the Public Health Act 1875, it cannot be enforced unless it is under the common seal of the corporation in accordance with sec. 174 of the Act.—*Young & Co. v. Leamington Corporation*, L.R. 8 Q.B.D. 579; 51 L.J. Q.B. 292; 46 L.T. 555; 30 W.R. 500.
- (vi.) **Q. B. Div.**—*Local Authority—Contract not under Seal*.—7 Will. IV. & 1 Vict., c. 78, s. 44; 38 & 39 Vict., c. 55, s. 174.—A resolution was passed by a corporation ordering payment of certain sums, each exceeding £50, to contractors for costs incurred in paving a street, no contract under seal having been entered into: *Held* that this was not a misapplication of the borough funds within sec. 44 of 1 Vict., c. 78.—*Regina v. Mayor of Norwich*, 30 W.R. 752.
- (vii.) **C. A.**—*Nuisance—Sewage—Pollution of Stream*.—38 & 39 Vict., c. 55, ss. 17, 332—39 & 40 Vict., c. 75, ss. 2, 3.—Where a nuisance is caused by the fouling of a stream by means of sewage passing into it through sewers under the control of a rural sanitary authority which is unable to stop the sewers without danger to the health of the neighbourhood, such authority is not committing an offence against secs. 17, 332 of Public Health Act, 1875, or secs. 2, 3 of Rivers Pollution Prevention Act, 1876.—*Attorney-General v. Dorking Guardians*, 46 L.T. 573; 30 W.R. 579.

Railway:—

- (viii.) **C. A.**—*Borrowing Powers—Ultra Vires—Sale and Hiring—Sureties*.—*Held*, reversing the decision of Kay, J. (see vi., p. 69), that the sale and

hiring could not be impeached, and affirming *Kay, J.*, that the sureties were liable under their guarantee.—*Yorkshire Railway Waggon Co. v. Maclure*, 30 W.R. 761.

- (i.) **Q. B. Div.—Carrier—Liability—Alternative Rates.**—B., on sending some fish by defendant railway company, signed a "risk note" by which the company were to be free from all liability for loss or damage by delay in transit or from whatever cause arising, and the rates charged were to be one-fifth lower than the ordinary rate. The company, as B. knew, carried goods at the ordinary rate without any condition respecting liability: *Held*, that the terms as to exemption contained in the risk note were reasonable and binding on B.—*Brown v. Manchester, Sheffield and Lincolnshire Rail. Co.*, 46 L.T. 389.
- (ii.) **C. A.—Compulsory Purchase—Accommodation Works**—8 & 9 Vict., c. 20, ss. 16, 68.—Land required by a Railway Company for the purpose of constructing accommodation works under secs. 16, 68, of Railways Clauses Act, 1845, is land required for the purposes of the undertaking; and where the company, acting *bond fide*, adopt one of two schemes for making such works which renders the acquisition of such land necessary, no ground for interfering with their compulsory powers arises from the fact that the alternative scheme would obviate the necessity for such acquisition.—*Wilkinson v. Hull and Barnsley Rail. Co.*, L.R. 20 Ch. D. 328; 46 L.T. 455; 30 W.R. 617.
- (iii.) **Ch. Div. F. J.—Compulsory Purchase—Easement—Entry—Lands Clauses Act, 1845, ss. 84, 85.**—The special Act of a company which incorporated the Lands Clauses Act, 1845, gave power to purchase and acquire the easement or right of constructing a tunnel without being obliged to purchase the surface over the tunnel, unless the jury or arbitrators to whom the question of compensation should be submitted, should determine that such easement could not be acquired without material detriment to the surface land: *Held* that the company could purchase the easement compulsorily, and that it was a hereditament within secs. 84, 85 of the Lands Clauses Act, and therefore that the company could enter on the land, before compensation was assessed, upon depositing the assessed value of the easement.—*Hall v. Midland Rail. Co.*, 30 W.R. 774.
- (iv.) **Ch. Div. F. J.—Compulsory Purchase—Entry—Minerals—Lands Clauses Act, 1845, ss. 16, 68, 85, 91**—8 & 9 Vict., c. 20, s. 77.—Where a railway company has given notice to take lands within the period limited for the exercise of its compulsory powers, its right to the land is not defeated by the expiration of the time for the completion of the works before the purchase is completed. A railway company may enter upon lands peaceably under sec. 85 of Lands Clauses Act, though the landowner has refused to give up possession. Clay is a mineral within sec. 77 of Railway Clauses Act, 1845.—*Loosemore v. Tiverton and North Devon Rail. Co.*, 51 L.J. Ch. 570; 30 W.R. 628.
- (v.) **C. A.—Compulsory Purchase of Minerals—Necessity**—8 Vict., c. 18, ss. 6, 16; c. 20, s. 77.—A railway company with the usual powers to purchase lands, that has acquired surface lands, has power to purchase compulsorily the minerals under the lands, at any time before the expiration of the time limited for the exercise of its compulsory powers. The opinion of the company's engineer, if *bond fide*, is the only evidence required by the Court as to the necessity of any purchase.—*Errington v. Metropolitan District Rail. Co.*, L.R. 19 Ch. D. 559; 51 L.J. Ch. 305; 46 L.T. 443; 30 W.R. 663.

- (i.) **Ch. Div. K. J.**—*Right to Subjacent Support—Minerals*—8 Vict., c. 20, s. 77.—The words "mines of coal, &c., and other minerals" include minerals got by open workings, such as clay.—*Midland Rail. Co. v. Haunchwood Brick and Tile Co.*, 46 L.T. 301; 30 W.R. 640.

Revenue:—

- (ii.) **Q. B. Div.**—*Property Tax—Assize Courts*—56 Vict., c. 35.—Property Tax under Schedules A. and B. of the Income Tax Acts is not payable in respect of a building consisting partly of a county police station, but mainly of Assize Courts used only by the judges on circuit, the justices in petty and quarter sessions, and the county court judge.—*Coomber v. Berkshire Justices*, L.R. 9 Q.B.D. 17; 51 L.J. Q.B. 297; 30 W.R. 779.
- (iii.) **Ch. Div. V. C. H.**—*Succession Duty—Englishmen Domiciled Abroad—Natural Child*—16 & 17 Vict., c. 51, s. 10.—An Englishman domiciled in Italy made a will leaving real estate in England to his four natural children, who, having been recognized by him as his children, were by the law of Rome entitled to succeed to personalty as to which he died intestate as *heredes ab intestato*: Held that the children were strangers in blood to the testator within the meaning of sec. 10 of Succession Duty Act, 1853.—*Anderson v. Atkinson*, 57 L.J. Ch. 452; 30 W.R. 562.

Scotland, Law of:—

- (iv.) **H. L.**—*Railway—Obstruction caused by Works—Compensation*—8 & 9 Vict., cc. 19, 33.—To give a claim to compensation under 8 & 9 Vict., cc. 19, 23, in respect of works authorised under those Acts, there must be actual injury to the land, or to some right attached thereto. If a direct proximate access to private land by a public highway is interfered with by the execution of such works, this is a subject for compensation.—*Caledonian Rail. Co. v. Walker's Trustees*, L.R. 7 App. 259; 30 W.R. 569.

Settled Estates Act:—

- (v.) **Ch. Div. V. C. H.**—*Sale out of Court—Settled Estates Act, 1877, s. 16.*—The Court has no jurisdiction under the Settled Estates Act, 1877, to direct a sale of settled estates out of Court.—*Re Harvey's Settled Estates*, 30 W.R. 697.
- (vi.) **C. A.**—*Sale under Sanction of Court—Mistake in Order—Purchaser's Title—Conveyancing Act, 1881, s. 70.*—Since the passing of the Conveyancing Act, 1881, a purchaser of property sold, with the approval of the Court, under the Settled Estates Act, 1877, is protected by the order approving the sale, even if it be wrong on the face of it.—*Re Hall Dave's Contract*, 46 L.T. 755; 30 W.R. 556.

Settlement:—

- (vii.) **Ch. Div. V. C. H.**—*Rectification—Hotchpot Clause.*—A lady who was donee under four instruments of powers of appointment among her three daughters, by four different deeds-poll appointed one-third of the properties subject to the powers to one of her daughters, and died without further exercising the powers. One only of the deeds-poll contained a hotchpot clause: Held on the evidence that the three other deeds must be rectified by having hotchpot clauses inserted.—*Killick v. Gray*, 46 L.T. 583.
- (viii.) **Ch. Div. F. J.**—*Setting Aside—Purchase by Trustees—Settlement of Purchase-money.*—The two eldest sons of an intestate having taken out administration to his estate, by a deed of family arrangement all the five children mortgaged the property to trustees for the amount of the estimated portions of the two younger children; and subject to the mortgage the trustees were to hold the property in trust for the three eldest children.

One of the two younger children was a daughter, and on her marriage her interest under the deed was settled on certain trusts. In an action brought nine years afterwards by the daughter and her husband to set aside the deed, on the ground of undue influence and want of advice: *Held* that though no fraud had been proved, the deed would have been set aside, as being a purchase by trustees from their cestui-que-trust, if it had not been for the daughter's marriage settlement; but that the settlement formed a fatal bar to setting aside the deed.—*Hemery v. Worsam*, 46 L.T. 584.

Ship:—

- (i.) **Q. B. Div.**—*Bill of Lading—Excepted Perils—Negligence of Servants—Collision—Judicature Act, 1873, s. 25 (9).*—Plaintiffs shipped goods on board defendant's vessel, the *C.*, under a bill of lading containing exceptions of collision, and accidents, loss, or damage from any act, neglect or default of the pilot, master, or mariners, or other the defendant's servants, in navigating the ship. The *C.* came into collision with another vessel of defendant's, the *A.*, the collision being due to negligence for which the *A.* was mainly, and the *C.* in part, in fault: *Held* that defendants were liable, and the extent of their liability was not affected by sec. 25, sub.sec. 9 of Judicature Act, 1873.—*Chartered Mercantile Bank of India v. Netherlands India Steam Co.*, L.R. 9 Q.B.D. 118; 51 L.J. Q.B. 393; 46 L.T. 530.
- ii.) **C. A.**—*Bottomry Bond—Communication with Owners—Foreign Ship.*—Decision of P. D. A. Div. (sec. vi., p. 89) reversed.—*The Gaetano e Maria*, 30 W.R. 766.
- (iii.) **Q. B. Div.**—*Charter-Party—Demurrage—Detention by Frost—Customary Manner of Loading.*—A charter-party provided that the ship should proceed to a certain port and there load in the customary manner from freighter's agents a cargo of iron; the cargo to be loaded as fast as the steamer could take on board, and if longer detained, merchants to pay a certain rate of demurrage, "detention by frost, &c., not to be reckoned as lay days." The freighter's agents, unlike most shippers at the port, had no wharf in the docks, but one up a canal connected with the docks, and the cargo was brought to the ship's side in lighters. After the loading began the canal became frozen so that the loading was interrupted. The dock all the time remained unfrozen. The shipowner, when he made the charter-party, did not know who were the freighter's agents: *Held* that the exception in the charter-party as to detention by frost applied, and the freighters were not liable for demurrage.—*Kay v. Field*, L.R. 8 Q.B.D. 564; 46 L.T. 630.
- (iv.) **Q. B. Div.**—*Charter-Party—Demurrage—Frost Preventing Loading.*—The provision as to demurrage in a charter-party contained an exception "in case of hands striking work or frosts or floods or any other unavoidable accidents preventing loading; in which case owners to have the option of employing the steamer in some short voyage trade, until receipt of written notice from charterers that they are ready to resume employment: *Held* that the exception in the charter-party applied where delay in supplying cargo occurred after the loading had begun, as well as when the commencement of loading was prevented by any of the specified causes.—*Coverdale v. Grant*, L.R. 8 Q.B.D. 600; 46 L.T. 632.
- (v.) **P. D. A. Div.**—*Charter-Party—General Ship—Lien for Freight—Notice.*—When a person without notice of any charter-party between the shipowner and charterer ships goods on board a vessel advertised as a general ship by the charterer, such goods are not subject to a lien reserved by the charter-party to the shipowner in respect of overdue freight.—*The Stornoway*, 51 L.J. P.D.A. 27; 46 L.T. 778.

- (i.) **P. D. A. Div.**—*Collision—Compulsory Pilotage—Foreign Ship*—6 Geo. IV., c. 125, s. 59.—*Order in Council*, 18th May, 1864—24 & 25 Vict., c. 47.—Pilotage is compulsory in the Thames on foreign vessels carrying passengers and bound for a port between Boulogne and the Baltic. A pilotage rate is not a due within 24 and 25 Vict., c. 47.—*The Vesta*; 51 L.J. P.D.A. 25; 46 L.T. 492; 30 W.R. 705.
- (ii.) **Q. B. Div.**—*Collision—Dock in Thames—Admiralty Jurisdiction—County Court*—24 Vict., c. 10, s. 7.—A collision occurred in a dock connected with the Thames by channels, provided with gates and locks: Held that a claim for damages arising therefrom was within sec. 7 of Admiralty Court Act, 1861.—*Regina v. Kerr*, L.R. 8 Q.B.D. 609; 51 L.J. Q.B. 305; 30 W.R. 566.
- (iii.) **P. D. A. Div.**—*Collision with sunk Vessel—Liability of Owners of Wreck*.—Where a vessel, through the negligence of those in charge of her becomes a wreck and a dangerous obstruction in a navigable river, it is the duty of those originally in charge of her, though not in actual possession at the time, to take steps to warn approaching vessels of her position.—*The Douglas*, 51 L.J. P.D.A. 55; 46 L.T. 438; 30 W.R. 692.
- (iv.) **P. D. A. Div.**—*Compulsory Pilotage—Damage to Pier—Private Act—Construction*.—Held that sec. 39 of New Brighton Pier Act, 1864, which enacts that if any person having the care of a ship shall wilfully or carelessly cause damage to the pier, the owners of the ship shall be answerable, does not render owners of a ship answerable for the consequences of a collision if due to negligence of a pilot compulsorily in charge of the ship.—*The Clan Gordon*, 46 L.T. 490; 30 W.R. 691.
- (v.) **C. A.**—*General Average—Damage caused in putting out Fire—Termination of Adventure*.—To pour water upon cargo in order to put out a fire in the ship's hold, is a general average act, and if the cargo is thereby injured the owner is entitled to a contribution. Whilst cargo remains on board, after a ship's arrival at port of destination, the maritime adventure is not terminated so as to absolve owners of the cargo and ship from mutual rights and liabilities.—*Whitcross Wire and Iron Co. v. Savill*, L.R. 8 Q.B.D. 653; 51 L.J. Q.B. 426; 46 L.T. 643; 30 W.R. 588.
- (vi.) **Q. B. Div.**—*General Average—Practice of Average Adjusters*.—A long-continued practice of average adjusters, who prepare their statements according to the law as laid down by the Courts, is no evidence of such a custom of trade as to be impliedly incorporated in a contract between ship-owners and cargo-owners.—*Svendson v. Wallace*, 46 L.T. 742.
- (vii.) **P. D. A. Div.**—*Salvage—Award—Apportionment*.—In a suit to recover salvage reward in respect of services rendered in towing a disabled vessel into safety, the court awarded £4,000, of which £3,000 was apportioned to the owners.—*The Kenmure Castle*, L.R. 7 P.D. 47; 30 W.R. 708.
- (viii.) **P. D. A. Div.**—*Salvage—Service to Vessels in Collision*.—Where two vessels are in collision and are entangled in a position dangerous to both, salvors who free both vessels from danger by towing one of them clear, are entitled to recover salvage reward from the owners of both vessels.—*The Vandyk*, L.R. 7 P.D. 42.

Solicitor:—

- (ix.) **Ch. Div. V. C. H.**—*Acting in Opposition to Former Client—Injunction*.—The jurisdiction of the Court to restrain a solicitor who has acted in one proceeding from acting in a subsequent proceeding for the party opposed to his former client, extends to the case where the solicitor has been discharged by the client.—*Little v. Kingswood Collieries Co.*, 51 L.J. Ch. 498.

(i.) **C. A.—Authority to Act for Client—Fraudulent defence by Solicitor—Leave to withdraw.**—A solicitor, who was co-defendant with his client in an action, obtained permission from him to defend the action for both of them, and fraudulently put in a defence; denying his own and admitting his client's liability, and afterwards absconded. Judgment having been obtained against the client upon the admissions, leave was given him, on appeal, to withdraw the defence and deliver a new one.—*Williams v. Preston*, 30 W.R. 555.

(ii.) **Q. B. Div.—Costs—County Court—19 & 20 Vict., c. 108, s. 36.**—Charges made by a solicitor for attendance and advice before commencing an action in a County Court, or for work done after the action has been concluded by judgment, are not costs or charges incurred in the suit within sec. 36 of County Court Act, 1856, and the County Court scale does not apply to them.—*Re Emmanuel*, 30 W.R. 735.

Trade Mark :—

(iii.) **Ch. Div. N. J.—Registration—New Mark—Distinctiveness—Trade Mark Rules, 17, 19.**—A new mark may be registered in respect of some goods contained in a class, although a similar mark is already registered for other goods in the same class, if the goods and trades of the proprietors are sufficiently distinct to prevent liability of confusion.—*Re Braby and Co.*, 46 L.T. 380; 30 W.R. 675.

Trustee :—

(iv.) **Ch. Div. V. C. B.—Attachment—Defaulting Trustee—32 & 33 Vict., c. 62, s. 4; 41 & 42 Vict., c. 54, s. 1.**—Where a defaulting trustee, without acting dishonestly, has made an erroneous application of trust-money, and has no present means of payment, the Court will, upon his executing a charge on the whole of his property, refuse to grant a writ of attachment.—*Holroyde v. Garnett*, 30 W.R. 604.

(v.) **Ch. Div. V. C. B.—Breach of Trust—Investment—Cheque payable to Stock-Broker—Loss of Trust Fund.**—A trustee about to invest trust funds instructed a stock-broker to purchase stocks, and the broker produced a bought note, irregularly drawn, but purporting to be a contract for the purchase of certain corporation securities, and showing that the contract was with the corporation. The stock might have been purchased from the corporation direct. The trustee gave the broker a cheque for the amount payable for the stock, and subsequently the broker absconded; and no securities were received by the trustee, and the money was lost: *Held* that the trustee was liable.—*Speight v. Gaunt*, 46 L.T. 726; 30 W.R. 785.

(vi.) **C. A.—New Trustee—Vesting Order—Lunatic Trustee—13 & 14 Vict., c. 60, ss. 32, 35.**—The Court has power, under the Trustee Act, 1850, to make an order both in Lunacy and the Chancery Division, appointing and vesting the right to transfer stock in three new trustees in place of three old trustees, of whom one is dead, one bankrupt, and one lunatic.—*Re Duce's Trusts*, 46 L.T. 698; 30 W.R. 759.

(vii.) **Ch. Div. F. J.—Retaining Trust Funds Uninvested—Rate of Interest to be Charged.**—An executrix and trustee allowed trust money to remain uninvested in the hands of her solicitor: *Held* that she ought to be charged with compound interest at three per cent. per annum, with half-yearly rests.—*Gilroy v. Stephen*, 46 L.T. 761; 30 W.R. 745.

(viii.) **Ch. Div. V. C. B.—Settled Estate—Proceedings for Protection of—Costs—22 & 23 Vict., c. 35, s. 30—Settled Estates Act, 1877, s. 17.**—Trustees authorised on a petition under sec. 30 of Trustee Relief Act, and sec. 17 of Settled Estates Act, 1877, to adopt proceedings taken by the tenant for life for the protection of the settled estates, and to pay the

tenant for life's costs as between solicitor and client out of moneys in their hands, the proceeds of sale of part of the estates.—*Re Earl de la Warr's Settled Estates*, 51 L.J. Ch. 407; 46 L.T. 340.

Vendor and Purchaser :—

- (i.) **C. A.**—*Covenant to Re-convey—Purchase from Railway Company.*—Decision of Kay, J. (sec. iii., p. 42) reversed.—*London and South-Western Rail. Co. v. Gomm*, 51 L.J. Ch. 530; 46 L.T. 449; 30 W.R. 620.
- (ii.) **C. A.**—*Misrepresentation—Rescission.*—An auctioneer, who was owner of £500 stock standing in the names of directors, which had been made an indemnity to provide against costs in a pending suit, put the fund up for sale under particulars stating the facts, and that there was a considerable sum applicable for payment of costs, and that the costs would be paid out of such sum. It appeared that the auctioneer had been informed before the sale that the fund was liable to be wholly swallowed up in costs: *Held*, in an action by the purchaser, that this was a misrepresentation entitling him to rescind.—*Matthias v. Yetts*, 46 L.T. 497.
- (iii.) **C. A.**—*Sale of Right of Entry—32 Hen. VIII., c. 9, s. 2—8 & 9 Vict., c. 106, s. 6—Covenant for Quiet Enjoyment—Breach—Damages.*—A. sought to recover certain lands, and the person in possession alleged that one-fourth share belonged to B., who had never been in possession. A. for £10 took a conveyance from B. of his share, with covenants for title and quiet enjoyment. B.'s share was worth £500. A. recovered possession, and the trustee in bankruptcy of B., who was bankrupt before his conveyance to A., recovered possession from A. of the one-fourth share. In an action by A. against B. for damages: *Held* that the conveyance to A. was not void by reason of 32 Hen. VIII., c. 9, s. 2; and that A. was entitled to £500 damages.—*Jenkins v. Jones*, L.R. 9 Q.B.D. 128; 30 W.R. 668.
- (iv.) **Ch. Div. C. J.**—*Specific Performance—Waste of Manor—Non-existence of Rights Over—Evidence.*—The lord of a manor contracted to sell part of the waste, and furnished a statutory declaration that, to the best of his information and belief, no copyholder or free tenant had exercised any right of common for forty years and upwards, that no copyholder or free tenant existed and that no quit rents had been paid, services rendered, or Court baron held, for sixty years and upwards: *Held* that the title could be forced on the purchaser.—*Re Bridges and McRae's Contract*, 30 W.R. 539.

Water :—

- (v.) **Q. B. Div.**—*Waterworks Company—Supply of Water by Measurement—Providing Metre—26 & 27 Vict., c. 93, s. 14.*—The special Act of a water company, which incorporated the Waterworks Clauses Act, 1863, provided for the supply of water for family use, at rates calculated on the rental of the houses, and for the supply of water for other than family consumption and for baths, at certain rates per thousand gallons: *Held* that there was no obligation imposed on the consumer of providing a metre for water supplied for a bath.—*Sheffield Waterworks Co. v. Carter*, L.R. 8 Q.B.D. 633.

Will :—

- (vi.) **C. A.**—*Charity—Mortmain.*—*Held*, reversing the decision of V. O. H. (see iv., p. 18) that the second bequest was also valid.—*Biscoe v. Jackson*, 51 L.J. Ch. 464; 46 L.T. 355.

- (i.) **Ch. Div. V. C. H.**—*Construction—Annuity free of Income Tax—Arrears—Statute of Limitations.*—Testator, who died in 1846, bequeathed to his wife an annuity of £400 free from all deductions in respect of any present or future taxes, charges, assessments or impositions, and directed his trustees to invest a fund to answer the annuity, which fund, subject to the annuity, was to be considered as part of his residuary personality. The trustees deducted income tax from the annuity till 1878: *Held* that the annuity was given free of income tax, and that the widow could recover the amounts deducted for income tax since testator's death.—*Bannerman v. Young*, 51 L.J. Ch. 449.
- (ii.) **C.A.**—*Construction—Charge of Debts—Devise to Executors.*—Decision of Kay, J. (see iii., p. 44) reversed.—*Re Tanqueray-Willams and Landan*, 51 L.J. Ch. 434; 46 L.T. 542; 30 W.R. 801.
- (iii.) **Ch. Div. F. J.**—*Construction—Forfeiture on Alienation—Acceleration of Remainder.*—Testator gave property to his son for life, to be conveyed to the son's children on his death in equal shares as they attained twenty-one, and he directed that his son's life interest should cease on alienation or bankruptcy and the gift to the children should be accelerated: *Held* that an assignment of the son's life interest and other property, which as to the life interest was never acted upon and subsequently disclaimed, worked a forfeiture, but that the gift to the children was not thereby accelerated.—*Hurst v. Hurst*, 51 L.J. Ch. 417.
- (iv.) **Q. B. Div.**—*Construction—Gift to Issue and their Heirs—Life Estate.*—Testator devised realty to his son, and after his decease to his lawful issue and their heirs for ever, if any, and if he should die without having any children born in wedlock then to E. and his heirs: *Held* that L. took an estate for life only.—*Morgan v. Thomas*, L.R. 8 Q.B.D. 575; 51 L.J. Q.B. 289; 46 L.T. 431; 30 W.R. 658.
- (v.) **P. D. A. Div.**—*Construction—Money—Residuary Gift.*—Testator bequeathed "the whole residue of money" to A., "excepting such things as the undermentioned:" *Held* a gift of residue to A.—*In the goods of White*, L.R. 7 P.D. 65; 51 L.J. P.D.A. 40; 46 L.T. 695; 30 W.R. 660.
- (vi.) **Ch. Div. F. J.**—*Construction—Power of Sale—Determination.*—Testator gave trustees extensive powers of management, including a power of sale, for a limited period, so as not to offend the rule against perpetuities: *Held* that it was the testator's intention that the powers should subsist, though the beneficial interest became vested in a person absolutely entitled, and that the trustees could make a title without the concurrence of the beneficiaries.—*Re Cotton's Trustees*, L.R. 19 Ch. D. 624; 51 L.J. Ch. 514; *Cotton v. London School Board*, 30 W.R. 610.
- (vii.) **Ch. Div. C. J.**—*Construction—Power to Lease—Person or Persons—Corporation.*—Trustees of a will had power to grant leases to any person or persons they should think fit: *Held* that this authorised them to grant a lease to a limited company.—*Re Jeffcock's Trusts*, 51 L.J. Ch. 507.
- (viii.) **P. C.**—*Construction—Precatory Trust.*—Testator gave all his property to his widow, "feeling confident that she will act justly to our children in dividing the same when no longer required by her:" *Held* that she took an absolute interest.—*Mussoorie Bank v. Raynor*, L.R. 7 App. 321; 46 L.T. 633.
- (ix.) **Ch. Div. F. J.**—*Construction—Residuary Gift—Direction to Transfer Business.*—Testator gave all his property to trustees upon trust to invest such part as they should think fit in his business, and to carry on the same till his son attained twenty-one, and to pay an annuity out of the

profits; and he provided that the proceeds of any part of his personal estate not required for the business should be applied for the same purposes as the capital employed in the business. The business was carried on in a freehold shop. *Held* that the gift of the business to his son carried the surplus profits of the business during the son's minority, but that the freehold shop did not pass under the gift.—*Henton v. Henton*, 30 W.R. 702.

- (i.) **Ch. Div. F. J.**—*Construction—Restraint on Anticipation—Income bearing Fund—Conversion.*—Testator bequeathed an annuity to his widow, and directed his trustees to provide for the same either by setting apart a portion of the proceeds of his residuary personalty, or by purchasing an annuity, and he bequeathed his residuary personalty to his two daughters for their separate use, without power of anticipation. The residue consisted of stock and cash: *Held* that there was no direction to convert the residue into money, and therefore that the stock could not be transferred to a married daughter.—*Re Clarke's Estate*, 30 W.R. 778
- (ii.) **C. A.**—*Construction—Revocation—Testamentary Appointment.*—A general clause in a will revoking all former wills revokes a prior testamentary appointment.—*Sotheman v. Denning*, L.R. 20 Ch. D. 99.
- (iii.) **C. A.**—*Construction—Specific Bequest.*—Decision of Fry, J. (see. viii., p. 74) reversed.—*Broadbent v. Barrow*, 46 L.T. 613; 30 W.R. 645.

ADDENDA

(Cases reported only in the *Law Times Reports* and *Weekly Reporter* for July 29th.)

Bill of Sale:—

- (i.) **C. J. B.**—*Registration—Affidavit of Attestation*—41 & 42 Vict., c. 31, ss. 8, 10.—Same decision as *Ford v. Kettle*, ante, vii., p. 78.—*Ex parte Knightley, Re Moulson*, 46 L.T. 776.

Company:—

- (ii.) **Ch. Div. F. J.**—*Articles of Association—Election of Directors*.²—The articles of association of a company provided that any casual vacancy occurring in the Board of Directors might be filled up by the directors by the election of a duly qualified member: *Held* that the fact that a general meeting intervened between the occurrence of a casual vacancy and the election of a member by the directors to fill such vacancy, did not render the election invalid.—*Munster v. Cammell & Co.*, 30 W.R. 812.
- (iii.) **Ch. Div. F. J.**—*Winding-up—Distribution of Assets*—On the winding-up of a limited company partaking of the character of a building society, directions were given as to the method in which any surplus assets should be applied.—*Re Land, Building, and Government Securities Society*, 46 L.T. 758.

Debtor and Creditor:—

- (iv.) **Ch. Div. F. J.**—*Negotiable Instrument—Theft of bond payable to Bearer—Bond jide Holder*.—A, being indebted to a bank, gave them two French bonds payable to bearer and transferable by delivery, and requested that they should be sold on his account. On giving the first bond he obtained a fresh advance from the bank. On the bonds being sent for sale it was discovered that both had been stolen: *Held* that as to the first bond the bank had a charge on it to the amount of the advance made thereon, but had no charge as to the second bond.—*Symons v. Mulkern*, 46 L.T. 763.

Mortgage:—

- (v.) **C. A.**—*Goodwill of Public-House—Transfer of License*.—Decision of Fry, J. (see viii., p. 90) affirmed.—*Rutter v. Daniel*, 30 W.R. 801.

Practice:—

- (vi.) **C. A.**—*Discovery—Particulars—Damage to Cargo of Ship*.—Decision of P. D. A. Div. (see vii., p. 65) reversed.—*The Rory*, 46 L.T. 757.
- (vii.) **Q. B. Div.**—*Dismissal for Want of Prosecution—Mistake—Enlargement of Time*.—When, by a Master's order, an action was to be dismissed, unless notice of trial were given by a certain day, and through a mistake of the solicitor's clerk, the notice was not so given, the Court, on an appeal from a judge at Chambers who declined to extend the time, refused to interfere with his discretion.—*Gilder v. Morrison*, 30 W.R. 815.

Settlement:—

- (viii.) **C. A.**—*Revocability—Volunteers*.—Decision of Fry, J. (see iv., p. 39) affirmed.—*Paul v. Paul*, 30 W.R. 801.

Solicitor :—

- (i.) **Q. B. Div.**—*Solicitor and Client—Execution of Fi. fa.—Authority of Creditor's Solicitor.*—A solicitor to a judgment creditor issuing a *fi. fa.* has no implied authority to direct the sheriff as to what goods he should seize, so as to render his client liable.—*Smith v. Keal*, 46 L.J. 770.

Vendor and Purchaser :—

- (ii.) **Q. B. Div.**—*Sale by Auction—Warranty by Auctioneer.*—An auctioneer cannot give a warranty without the vendor's authority. If he does warrant further than he is instructed the vendor is not bound.—*Payne v. Lord Leconfield*, 30 W.R. 814.
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